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CHAPTER - The Indian Contract Act, 1872

Q.1 (i) Mr. Ramesh promised to pay ₹ 50,000 to his wife Mrs. Lali so that she can spend the sum on her 30th birthday. Mrs. Lali insisted her husband to make a written agreement if he really loved her. Mr. Ramesh made a written agreement and the agreement was registered under the law. Mr. Ramesh failed to pay the specified amount to his wife Mrs. Lali. Mrs. Lali wants to file a suit against Mr. Ramesh and recover the promised amount. Referring to the applicable provisions of the Contract Act, 1872, advise whether Mrs. Lali will succeed. (3 marks)

(ii) A shop-keeper displayed a pair of dress in the show-room and a price tag of ₹ 2,000 was attached to the dress. Ms. Lovely, looked at the tag and rushed to the cash counter. Then she asked the shop-keeper to receive the payment and pack up tlje dress. The shop-keeper refused to hand-over the dress to Ms. Lovely in consideration of the price stated in the price tag attached to the dress. Ms. Lovely seeks your advice whether she can sue the shop-keeper for the above cause under the Indian Contract Act, 1872. (3 marks)

Answer:

Legal Provisions

Parties must intend to create legal obligations:

There must be an intention on the part of the parties to create legal relationship between them. Social or domestic type of agreements are not enforceable in court of law and hence they do not result into contracts.

Analysis

In the given question, Mr. Ramesh promised to pay ₹ 50,000 to his wife so that she can spend the samp on her birthday. However, 'subsequently, Mr. Ramesh failed to fulfill the promise, for which Mrs. Lali wants to file a suit against Mr. Ramesh.

Conclusion

Here, in the given circumstance wife will not be able to recover the amount as it was a social agreement and the parties did not intend to create any legal relations.

(ii) The offer should be distinguished from an invitation to offer. An offer is definite and capable of converting an intention in to a contract. Whereas an invitation to an offer is only a circulation of an offer, it is an attempt to induce offers and precedes a definite offer. Where a party, without expressing his final willingness, proposes certain terms on which he is willing to negotiate, he does not make an offer, but invites only the other party to make an offer on those terms. This is the basic distinction between offer and invitation to offer.

The display of articles with a price in it in a self-service shop is merely an invitation to offer. It is in no sense an offer for sale, the acceptance of which constitutes a contract. In this case, Ms. Lovely by selecting the dress and approaching the shopkeeper for payment simply made an offer to buy the dress selected by her. If the shopkeeper does not accept the price, the interested buyer cannot compel him to sell.

Q2) Woollen Garments Limited entered into a contract with a group of women in July, 2023 to supply various woollen clothes for men, women and kids like sweaters, monkey caps, mufflers; woollen coats, hand gloves etc. before the commencement of the winter season. The agreement expressly provides that the woollen clothes shall be supplied by the end of October, 2023 before starting of winter season. However, due to the prolonged strike, women group could tender the supplies in March, 2024 when the winter season was almost over. Analysing thesituation and answer the following questions in light of the provisions of the Indian Contract Act, 1872:
(A) Whether company can reject the total supply by women group?
(B) Whether company can accept the total supply on request of women group?
(3 Marks)

Answer:

Legal Provisions:

According to section 55 of the Indian Contract Act, 1872, when a party to a contract promises to do certain thing at or before the specified time, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of essence of the contract.

Effect of acceptance of performance at time other than agreed upon -
If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of acceptance, he gives notice to the promisor of his intention to do so.

Analysis and Conclusion:

In the instant case,
(A) Woollen Garments Limited is legally entitled to reject the goods due to the failure to meet the delivery deadline, as time was a crucial term of the contract.
(B) The company cannot accept the total supply on the request of woman group but only when the company i.e. buyer elects to do so. In that case, the company cannot claim compensation for any loss occasioned by the non-performance of the promise (i.e. delay in supply) at the time agree

Q3) Mr. A was running an orphanage. His friend Mr. S, a philanthropist agreed to donate ` 2 lakh for treatment of a child, who was suffering from cancer. On emergency, Mr. A incurred ` 1.5 lakh on treatment of child. Now, Mr. S refused to pay. Whether Mr. A can claim ` 1.5 lakh from Mr. S with reference to provisions of the Indian Contract Act, 1872? (2 Marks)

Answer:

Legal Provisions

The general rule is that an agreement made without consideration is void (Section 25 of the Indian Contract Act, 1872).
However, in the following case, the agreement though made without consideration, will be valid and enforceable.
Charity: If a promisee undertakes the liability on the promise of the person to contribute to charity, there the contract shall be valid.

Conclusion

In the instant case, Mr. A can claim 1.5 lakh from Mr. S.

4) Mr. A, a 20-year-old art student, was severely injured in a hit-and-run accident, leaving him in a coma for six months. During this period, he was entirely incapable of rational judgment. Mr. A lived alone in a rented apartment, and his only known relative was his elderly aunt, Ms. B, who lived in a different city and survived on a meager pension.
Mr. C, Mr. A's landlord and a family friend, moved Mr. A to a better hospital, paid for his advanced medical treatments, and provided him with nutritious food and nursing care, all suited to a middle-class lifestyle. He also located Ms. B and, knowing she was financially weak, gave her ₹3 lakhs for her heart surgery, believing Mr. A would have wanted to help her if he were capable.
After a year, Mr. A recovered fully and inherited a valuable property from a distant relative. Mr. C presented Mr. A with a bill for ₹25 lakhs, covering:
(i) ₹15 lakhs for Mr. A's medical and living expenses during his coma.
(ii) ₹3 lakhs given to Ms. B for her surgery.
(iii) ₹7 lakhs as a charge for his time and effort in managing the affairs.
Mr. A agrees that the medical care was necessary but argues that the amount is excessive and that he is only liable to pay a "reasonable" amount. He refuses to pay for his aunt's surgery and for Mr. C's time.
Based on the provisions of the Indian Contract Act, 1872, decide:
(a) Can Mr. C recover any payment from Mr. A?
(b) What is the extent of Mr. A's liability, if any?
(c) Is Mr. A liable for the money given to his aunt, Ms. B?
(6 Marks)

Answer
Legal Provision:
This case is governed by Section 68 of the Indian Contract Act, 1872. It states that if a person incapable of contracting (e.g., a minor, a person of unsound mind) or anyone whom such person is legally bound to support is supplied with necessaries suited to their condition in life, the supplier is entitled to be reimbursed from the property of the incapable person.
Analysis and Decision:
(a) Can Mr. C recover any payment from Mr. A?
Yes, but only for the necessaries. Mr. A was a person of unsound mind (in a coma) and incapable of contracting during the period. Mr. C supplied him with necessaries (medical treatment, food, nursing care). Therefore, Mr. C is entitled to be reimbursed for these expenses from Mr. A's property.
(b) What is the extent of Mr. A's liability?
Mr. A's liability is not for the billed amount of ₹15 lakhs but for a reasonable price of the

necessaries supplied. The claim must be for the value of the goods/services, not necessarily the cost incurred by the supplier if it was excessive. The amount must be justified as reasonable for the "necessaries" suited to Mr. A's condition in life (a middle-class art student). The ₹7 lakhs claimed for "time and effort" is not recoverable; Section 68 only allows reimbursement for necessaries supplied, not for personal services or time spent.

(c) Is Mr. A liable for the money given to his aunt, Ms. B?

No, this amount is not recoverable from Mr. A. For a claim to succeed under Section 68 for a third party (the aunt), two conditions must be met:

The third party must be someone the incapable person is legally bound to support.

The supplies must be necessaries for that third party.

While the heart surgery is a necessary for Ms. B, Mr. A (a 20-year-old student) was under no legal obligation to support his financially independent aunt. The moral or emotional desire to help does not create a legal liability. Therefore, this was a voluntary payment by Mr. C and cannot be recovered from Mr. A's property.

Final Summary:

Mr. C can recover a reasonable amount for the medical and living expenses (necessaries) provided to Mr. A during his incapacity.

He cannot recover the ₹3 lakhs given to the aunt, as there was no legal duty to support her.

He cannot recover the ₹7 lakhs for his time and effort.

The total recoverable amount will be determined by a court based on the reasonable value of the necessaries actually supplied to Mr. A himself.

Q.5 Mr. S aged 58 years was employed in a Govt. Department. He was going to retire after two years. Mr. D made a proposal to Mr. S to apply for voluntary retirement from his post so that Mr. D can be appointed in his place. Mr. D offered a sum of ₹ 10 Lakhs as consideration to Mr. S in order to induce him to retire.

Mr. S refused at first instance but when he evaluated the amount offered as consideration is just double of his cumulative remuneration to be received during the tenure of two years of employment, he agreed to receive the consideration and accepted the above agreement to receive money to retire from his office.

Whether the above agreement is valid? Explain with reference to provision of Indian Contract Act, 1872. (4 marks)

Answer:

An agreement to trafficking in public office is opposed to public policy, as it interferes with the appointment of a person best qualified for the service of the public. Public policy requires that there should be no money consideration for the appointment to an office in which the public is interested. The following are the examples of agreements that are void; since they are tantamount to sale of public offices.

(1) An agreement to pay money to a public servant in order to induce him to retire from his office so that another person may secure the appointment is void.

(2) An agreement to procure a public recognition like Padma Vibhushan for reward is void. In the given case, Mr. D offered ₹ 10 lakh to Mr. S as consideration in order to induce him to retire so that Mr. D can be appointed in his place.

The above agreement is opposed to public policy therefore void.

6) Neha put her used car up for sale. Rahul, a potential buyer, inspected the car on a rainy day. The car had a known electrical fault that caused the "Check Engine" light to flicker intermittently, which Neha was aware of. Due to the humidity from the rain, the light did not come on during Rahul's inspection.
Consider the following scenarios and determine the validity of the contract under the Indian Contract Act, 1872:
(A) Rahul simply asks, "Is everything working perfectly?" and Neha, wanting to sell the car, remains silent and smiles.
(B) Rahul is a close childhood friend of Neha, and he tells her, "I'm trusting your word completely on this car's condition." Neha says nothing about the fault.
(C) During the inspection, Rahul notices a faint, unusual smell but can't identify it. He says, "This smell is probably nothing, right? If you don't say anything, I'll assume it's all fine." Neha, knowing the smell is from a burning wire related to the electrical fault, remains silent.
Advise on the validity of the contract in each of the above circumstances. (5 Marks)

Answer
Legal Provision:
This question is governed by Section 17 of the Indian Contract Act, 1872, which defines fraud. A key component of fraud is active concealment or silence in circumstances where there is a duty to speak or where silence is, in itself, equivalent to speech.
Analysis and Conclusion:
(A) Validity: VALID. Mere silence is not fraud. Neha has no general duty to voluntarily disclose every defect. Her silence and smile in response to a general question like "Is everything working perfectly?" would likely be considered a non-committal gesture, not a positive affirmation or active concealment. Therefore, her silence does not amount to fraud, and the contract is valid.
(B) Validity: VOIDABLE (due to fraud). Here, a special circumstance exists. When Rahul, a close friend, places complete trust in Neha and explicitly states he is relying on her word, it creates a relationship of confidence. This imposes a duty on Neha to speak and disclose known defects. Her silence in this situation, breaching this duty, is equivalent to speech and constitutes active concealment, which is fraud under Section 17. Thus, the contract is voidable at Rahul's option.
(C) Validity: VOIDABLE (due to fraud). This is a case where silence is equivalent to speech. Rahul's statement ("If you don't say anything, I'll assume it's all fine") directly calls for a response regarding a specific observation. Neha's deliberate silence in the face of this direct implication, while knowing the true facts (the cause of the smell), is a form of deception. Her silence actively leads Rahul to a false conclusion. This constitutes fraud, making the contract voidable by Rahul.

Q.7 Srishti, a minor, falsely representing her age, enters into an agreement with an authorised Laptop dealer Mr. Gupta, owner of SP Laptops, for purchase of Laptop on credit amounting? 60,000/- for purchasing a Laptop on 1st August 2021. She promised

to pay back the outstanding amount with interest @ 16% p.a. by 34st July 2022. She told him that in case she won't be able to pay the outstanding amount, her father Mr. Ram will pay back on her behalf. After one year, when Srishti was asked to pay the outstanding amount with interest she refused to pay the amount and told the owner that she is minor and now he can't recover a single penny from her.

She will be adult on 1st January 2024, only after that agreement can be ratified. Explain by which of the following way Mr. Gupta will succeed in recovering the outstanding amount with reference to the Indian Contract Act, 1872.

(i) By filing a case against Srishti, a minor for recovery of outstanding amount with interest?

(ii) By filing a case against Mr. Ram, father of Srishti for recovery of outstanding amount?

(iii) By filing a case against Srishti, a minor for recovery of outstanding amount after she attains maturity? 2022 - June [3] (6 marks)

Answer:

(i) A minor is not competent to contract and any agreement with or by a minor is void from the very beginning. In the instant case, the agreement between Mr. Gupta and Srishti (minor) is void as Srishti is incompetent to make the contract.

Therefore, Mr. Gupta will not succeed in recovering the outstanding amount with interest by taking legal action against Srishti the minor.

(ii) Mr. Gupta cannot succeed in recovering the outstanding amount along with interest by filing a case against Mr. Ram, since he will not be liable for the acts done by his daughters and moreover, Shrishti is not acting as an agent of his father, thus Mr. Ram (i.e.guardian) is not liable for the acts of his daughter even as a principal.

(iii) Mr. Gupta cannot succeed in recovering the outstanding amount with interest by filing a case against Srishti even after she attains majority age, since minor agreements are void-ab-intio and cannot be ratified even after attaining majority age.

Q.8 Mr. Y aged 21 years, lost his mental balance after the death of his parents in an accident. He was left with his grandmother aged 85 years, incapable of walking and dependent upon him. Mr. M their night hour, out of pity, started supplying food and other necessaries to both of them. Mr. Y and his grandmother used to live in the house built by his parents. Mr. M also provided grandmother some financial assistance for her emergency medical treatment. After supplying necessaries to Mr. Y for four years, Mr. M approached the former asking him to payback ₹15 Lakhs inclusive of ₹ 7 Lakhs incurred for the medical treatment of the lady (grandmother). Mr. Y pleaded that he has got his parent's jewellery to sell to a maximum value of ₹ 4 Lakhs, which may be adjusted against the dues. Mr. M refused and threatened Mr. Y of legal suit to be brought against for recovering the money.

Now, you are to decide upon based on the provisions of The Indian Contract Act, 1872:

(i) Will Mr. M succeed in filing the suit to recover money? Elaborate the related provisions?

(ii) What is the maximum amount of money that can be recovered by Mr. M?

(iii) Shall the provisions of the above act also apply to the medical

treatment given to the grandmother? (6 marks)

Answer:

Legal Provisions

Under Section 11 and 12 of the Indian Contract Act, 1872, for executing a valid contract, the parties to same should be of sound mind.

As per Section 11: Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disnour contracting by any law to which he is subject.

As per Section 12: A person is said to be of sound mind for the purposes of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgement as to its effect upon his interest.

Whereas, a person who is usually of unsound mind, but occassionally of sound mind, may make a contract when he is of sound mind.

Analysis

In the given case Mr. Y. is a person of unsound mind and he is looking after his grandmother aged 85 years, incapable of walking and dependent upon him. Mr. M out of the kindness started supplying food and other necessities to both of them.

After supplying necessaries to Mr. Y. for 4 years he approached to payback ₹ 15 lakhs inclusive of ₹ 7 lakhs incurred for the medical treatment of the lady.

Conclusion

Now as per the above given scenario following conclusions can be drawn in this case.

(i) As Mr. Y is an adult and is usually of sound mind but occasssionally of unsound mind can make a contract when he is of sound mind.

So, as per the above provisions Mr. M will succeed to recover the money and he can file suit upon Mr. Y.

(ii) The maximum amount of money that can be recovered by Mr. M is only to the extent of Mr. Y'.s estate i.e. the jewellery of his parents worth 4 lakhs can be adjusted against the dues.

(iii) The provisions of the above act shall also be applied to the medical treatment given by Mr. M to the grandmother of Mr. Y.

Q.9) Mr. X and Mr. Y entered into a contract on 1st August, 2018, by which Mr. X had to supply 50 tons of sugar to Mr. Y at a certain price strictly within a period of 10 days of the contract. Mr. Y also paid an amount of ₹ 50,000 towards advance as per the terms of the above contract. The mode of transportation available between their places is roadway only. Severe flood came on 2nd August, 2018 and the only road connecting their places was damaged and could not be repaired within fifteen days. Mr. X offered to supply sugar on 20lh August, 2018 for which Mr. Y did not agree. On 1st September, 2018, Mr. X claimed compensation of ₹ 10,000 from Mr. Y for refusing to accept the supply of sugar, which was not there within the purview of the contract. On the other hand, Mr. Y claimed for refund of ₹ 50,000, which he had paid as advance in terms of the contract. Analyse the above situation in terms of the provisions of the Indian Contract Act, 1872 and decide on Y's contention. (4 marks)

Answer:

Legal Provisions

According to the facts of the case it can be clearly observed that the contract entered into by the parties Mr. X and Mr. Y demonstrates a case under the applicability of the provisions of **Section 56 of Indian Contract Act, 1872** that States - "A contract to do an act which after the contract is made becomes impossible by reason of some event which the promisor could not prevent becomes void."

Analysis and conclusion

In this case Mr. X has promised to supply 50 tons of sugar to Mr. Y for which Mr. Y has paid an amount of ₹ 50,000 in advance according to the terms of the contract. But due to severe flood the only mode of transportation available between their places is damaged which clearly makes the execution of delivery of 50 tons of sugar to Mr. Y impossible within the stipulated time. Now Mr. X claims compensation of ₹ 10,000 from Mr. Y for non-acceptance of delivery after expiry of the stipulated time - period but since the contract has already gone void due to impossibility of performance within the stipulated time - period there remains no legal room for demanding compensation. But at the same time the contention of Mr. Y for refund of his previously advanced sum of ₹ 50,000 stands valid as under the provisions of Indian Contract Act,1872 if a contract turns void due to any specific reason then all previously advanced sums have to be refunded.

Q.10 T owes G, the following debts as per the table given below:

Amount of the Debt (in Rs.)	Position of Debt
5,000	Time barred on 01st July, 2023 as per the provisions of the Limitation Act,1963
3,000	Time barred on 01st July, 2023 as per the provisions of the Limitation Act,1963
12,500	Due on 1st April, 2022
10,000	Due on 15th July, 2023
7,500	Due on 25th November, 2023

G makes payment on 1st April, 2023 mentioned as below without any notice regarding how to appropriate the amount / payment.

(i) A cheque of Rs. 12,500

(ii) A cheque of Rs. 4,000.

In such a situation how the appropriation of the payment is done against the debts as per the provisions of the Indian Contract Act, 1872 by assuming that T also has not appropriated the amount received towards any particular debt.

(4 Marks)

Answer:

Legal Provisions

As per the provisions of **Section 59 of the Indian Contract Act, 1872**, where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.
As per the provisions of **Section 61 of the Indian Contract Act, 1872,** where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionably.

Analysis

In the present case, G made two payments by way of two cheques. Also, neither G nor T said anything as to the appropriation of the amount towards any particular debt.
Since one of the issued cheques was exactly the amount of the debt due i.e. of Rs. 12,500, by applying the **provisions of Section 59** we can say that this is a circumstance indicating for appropriation against that particular debt.
Cheque of Rs. 4,000 can be appropriated in terms of the **provisions of Section 61** since neither of the parties, have made any appropriation. The amount will be appropriated in discharging of the debts in order of time against any lawful debt whether they are or are not barred by the law in force for the time being as to the limitation of suits.
Hence cheque of Rs.12,500 will be appropriated against the debt of Rs. 12,500 which is due on 1st April, 2022.

Conclusion

As per the scenario given in the question, since two debts are persisting in order of time which were treated as time barred on 1st July 2023, the amount of Rs. 4,000 will be appropriated proportionately, i.e. in proportion of 5,000 : 3,000. Therefore as per the provisions of the Indian Contract Act, 1872, Rs. 2,500 will be appropriated for the first debt and Rs. 1,500 will be appropriated towards the second debt.

Q.11) M Ltd., contract with Shanti Traders to make and deliver certain machinery to them by 30.6.2017 for ₹ 11.50 lakhs. Due to labour strike, M Ltd. could not manufacture and deliver the machinery to Shanti Traders. Later, Shanti Traders procured the machinery from another manufacturer for ₹ 12.75 lakhs. Due to this Shanti Traders was also prevented from performing a contract which it had made with Zenith Traders at the time of their contract with M Ltd. and were compelled to pay compensation for breach of contract. Advise Shanti Traders the amount of compensation which it can claim from M Ltd., referring to the legal provisions of the Indian Contract Act, 1872 (6 marks)

Answer:

Legal Provisions

When a contract has been broken, the party who suffers by such breach in entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which parties know, when they made the contract to be likely to result from the breach of

it.
Such compensation is not to be given for any remote or indirect loss or damage sustained by reasons of the breach.

Analysis

In the given case, Shanti Traders suffered a loss ₹ 1.25 lakhs (12.75 - 11.50) due to breach of contract by M Ltd. This naturally arose in the usual course of things. Shanti Traders also had to pay penalty to Zenith Trader for breach of contract, which should be considered as indirect loss or remote loss for which M Ltd. cannot be held responsible.

Conclusion

Therefore, Shanti Traders can claim an amount of ₹ 1.25 lakh from M Ltd. and nothing beyond.

Q.12 On 1st March 2023, T Readymade Dress Garments, Shimla enters into a contract with J Readymade Garments, Jaipur for the supply of different sizes of shirts 'S' (Small), 'M' (Medium), and 'L' (Large). As per the terms of the contract, 300 pieces of each category i.e. 'S' @ ₹ 900; 'M' @ ₹ 1,000 and 'L' @ ₹ 1,100 per piece have to be supplied on or before 31st May, 2023. However, on 1st May, 2023, T Readymade Dress Garments, Shimla informed J Readymade Garments, Jaipur that the firm is not willing to supply the shirts at the above rate due to the rise of prices in the raw material cost. In the meantime, prices for similar shirts have gone up in the market to the tune of ₹ 1,000; ₹ 1,100; and ₹ 1,200 for 'S', 'M' and 'L' sizes respectively. Examine the rights of J Readymade Garments, Jaipur in this regard as per the provisions of the Indian Contract Act, of 1872. _(3 Marks)

Answer:

Legal Provisions

As per the **provisions of Section 39 of the Indian Contract Act, 1872**, when a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance.

Analysis and Conclusion

J Readymade Garments in the given situation has two options, out of which he has to select any one:

(i) Either to treat the contract as rescinded and sue T Readymade Dress Garments for damages from breach of contract immediately without waiting until the due date of performance or

(ii) He may elect not to rescind but to treat the contract as still operative and wait for the time of performance and then hold the other party responsible for the consequences of non-performance.

Important Note:

The answer can also be given as per **Section 73 of the Indian Contract Act, 1872** which lays down that when a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract, compensation for any loss

or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew when they made the contract to be likely to result from the breach of it.

In the instant case, J Readymade Garments, Jaipur would be entitled to get the damages i.e. difference between the contract price and the market price on the day of default from T Readymade Dress Garments, Shimla. In other words, the amount of damages would be ₹ 90,000 [300 piece @ ₹ 100 (Small), 300 piece @ ₹ 100 (Medium) and 300 piece @ ₹ 100 (Large)].

Q13Raghav found gold and diamond studded wristwatch value approximately ` 1,00,000/- on the roadside. He picked it up and then advertised in the newspaper that the true owner thereof can take the watch after showing proper evidence. After waiting for a certain period of time, when the true owner did not tum up, he gifted that wristwatch to his son Mahesh. A few days later, Madhav, the true owner of watch, somehow noticed his watch on wrist of Mahesh. He approached him to collect the same, but Mahesh refused. In the evening, Raghav called Madhav and told him that he incurred f 20,000 to find the true owner if he fails to reimburse him the lawful expenses incurred on finding out the true owner, he will sue him for recovery thereof or retain the possession of the watch with him till recovery. Even he can sell the watch for recovery of expenses. Advise whether the following actions of Raghav were lawful according to provisions of The Indian Contract Act, 1872:
(A) Gifting the wristwatch to his son.
(B) Warning Madhav to sue for recovery of lawful expenses incurred in finding true owner.
(C) Retaining the possession of wristwatch till recovery of lawful expenses.
(D) Selling of wristwatch for recovery of expenses.
(4 Marks)

Answer: -

Legal Provisions

Responsibility of finder of goods (Section 71 of the Indian Contract Act, 1872): A person who finds goods belonging to another and takes them into his custody is subject to same responsibility as if he were a bailee. Thus, a finder of lost goods has:
(i) to take proper care of the property as man of ordinary prudence would take
(ii) no right to appropriate the goods and
(iii) to restore the goods if the owner is found.

The right of finder of lost goods- may sue for specific reward offered [Section 168]: The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him in finding the owner and preserving the goods found. But he has a right to retain the goods against the owner until he receives such compensation.

When finder of thing commonly on sale may sell it [Section 169]: When a thing which is commonly the subject of sale if lost, if the owner cannot with reasonable diligence be found, or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it—
(1) when the thing is in danger of perishing or of losing the greater part of its value, or
(2) when the lawful charges of the finder in respect of the thing found amount to two-thirds of its value.

Analysis and Conclusion

(A) **Gifting the wristwatch to his son Mahesh is unlawful**. Raghav had no ownership rights over the watch and could not legally transfer it to someone else.
(B) **Warning Madhav to Sue for Recovery of Lawful Expenses**: Raghav has no right to sue Madhav for the expenses voluntarily incurred by Raghav in finding the owner.
(C) **Retaining Possession of the Wristwatch Until Recovery of Lawful Expenses**: Raghav's action of retaining the wristwatch until Madhav reimburses him for lawful expenses is valid.
(D) **Selling of Wristwatch for Recovery of Expenses**: the watch is not perishable, and the expenses claimed (₹ 20,000) are far below two-thirds of the value of the watch (₹ 1,00,000). Therefore, Raghav does not have the right to sell the watch under these circumstances, and selling the watch would be unlawful.

Q.14 'Amit' stands surety for 'Bikram' for any amount which 'Chander' may lend to 'Bikram' from time to time during the next three months subject to a maximum amount of ₹ 1,00,000 (one lakh only). One month later 'Amit' revokes the surety, when 'Chander' had already lent to 'Bikram' ₹ 10,000 (ten thousand). Referring to the provisions of the Indian Contract Act, 1872. Decide:
(i) Whether 'Amit' is discharged from all the liabilities to 'Chander' for any subsequent loan given to 'Bikram'?
(ii) What would be your answer in case 'Bikram' makes a default in paying back to 'Chander' the already borrowed amount of ₹ 10,000?
(5 marks)

Answer:
The problem as asked in the question depends on the provisions of the Indian Contract Act, 1872 as contains in **Section 130.** The Section relates to the revocation of a continuing guarantees as to future transactions which can be done in any of the two ways :

1. **By notice:** By notice to the creditor, the continuing guarantee can be revoked at any time by the surety as to future transactions.
2. **By death of surety:** In regard to the future transaction the death of the surety operates, in the absence of any contract to the contrary, as a revocation.

The liability of the surety remains same for the previous transactions. Thus, by using the above rule in the question, A is discharged from all the liabilities to C for any subsequent loan.

In second case the answer will change that is A will be liable to C for ₹10,000/35,000 on default of B because the loan was taken before the notice of revocation was given to C.

Q.15 'C' advances to 'B' ₹ 2,00,000 on the guarantee of 'A'. 'C' has also taken a further security for the same borrowing by mortgage of B's furniture worth ₹ 2,00,000 without knowledge of 'A'. 'C' cancels the mortgage. After 6 months 'B' becomes insolvent and 'C' sues 'A' on his guarantee. Decide the liability of 'A' if the market value of furniture is worth ₹ 80,000, under the Indian Contract Act, 1872.
(4 marks)

Answer:
Legal Provisions

As per **Section 141 of the Indian Contract Act, 1872,** a surety is entitled to the. benefit of every security which the creditor has against the principal debtors at the time when the contract of surety-ship is entered into, whether the surety knows of the existence of such

security or not; and if the creditor loses, or without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.

Analysis and Conclusion

In this case, C advances to B ₹ 2,00,000 on the guarantee of A - C has also taken a further security for the same borrowing by mortgage of B's furniture worth ₹ 2,00,000 without knowledge of A - C cancels the mortgage. After 6 months B become insolvent and C sues A on his guarantee. So as per the above provisions, A is discharged from his liability to the amount of furniture worth ₹ 80,000 and will remain liable for balance ₹ 1,20,000.

Q.16 Mr. CB was invited to guarantee an employee Mr. BD who was previously dismissed for dishonesty by the same employer. This fact was not told to Mr. CB. Later on, the employee embezzled funds.
(i) Whether CB is liable for the financial loss as surety under the provisions of the Indian Contract Act, 1872?
(ii) Mr. X agreed to give a loan to Mr. Y on the security of four properties. Mr. A gave guarantee against the loan. Actually Mr. X gave a loan of smaller amount on the security of three properties. Whether Mr. A is liable as surety in case Mr. Y failed to repay the loan?
(4 marks)

Answer:

(i) ***Provision:***

As per **Section 143 of the Indian Contract Act, 1872**, any guarantee which the creditor has obtained by means of keeping silence as to material circumstances, is invalid.

Analysis and Conclusion

In the given case, Mr. CB was invited to Guarantee an employee Mr. BD who had previously dismissed for dishonesty by the same employer. This fact was not told to Mr. CB latter on the employee embezzled funds. So as per the above mentioned prevision CB is not liable for the financial loss as a surety.

(ii) ***Provision:***

As per **the provisions of Section 133 of the Indian Contract Act, 1872,** any variance, made without the surety's consent, in the terms of the contract between the principal [debtor] and the creditor, discharges the surety as to transactions subsequent to the variance.,

Analysis and Conclusion

In the given instance, the actual transaction was not in terms of the guarantee given by Mr. A. The loan amount as well as the securities were reduced without the knowledge of the surety.
So, accordingly, Mr. A is not liable as a surety in case Y failed to repay the loan.

Q.17 Alpha Motor Ltd. agreed to sell a bike to Ashok under hire- purchase agreement on guarantee of Abhishek. The Terms were: hire- purchase price ₹ 96,000 payable in 24 monthly Installments of ₹ 8,000 each. Ownership to be transferred on the payment of last Installment. State whether Abhishek is discharged in each of the following alternative cases under the provisions of the Indian Contract Act, 1872:

(i) Ashok paid 12 installments but failed to pay next two installments. Alpha Motor Ltd. sued Abhishek for the payment of arrears and Abhishek paid these two installments i.e. 13th and 14th. Abhishek then gave a notice to Alpha Motor Ltd. to

revoke his guarantee for the remaining month.

(ii) If after 15th Months, Abhishek died due to COVID-19.

(4 marks)

Answer:

Legal Provisions

According to Sec. 130 of the Indian Contract Act, 1872, the continuing guarantee may at any time be revoked by the surety as to future transactions by notice to the creditors. Once the guarantee is revoked, the surety is not liable for any future transaction however he is liable for all the transactions that happened before the notice was given.

Analysis

A specific guarantee can be revoked only if liability to principal debtor has not accrued.

(i) Ashok paid 12 instalments (out of total 24 monthly instalments), but failed to pay next two instalments. Abhishek (guarantor) paid the 13th and 14th installments but then he revoked guarantee for the remaining months. Thus, Abhishek is not liable for installments that was made after the notice, but he is liable for installments made before the notice (which he had paid i.e. 13th and 14th installments).

(ii) According to Sec. 131 of the Indian Contract Act, 1872, in the absence of any contract to the contrary, the death of surety operates as a revocation of a continuing guarantee as to the future transactions taking place after the death of surety. However, the surety's estate remains liable for the past transactions which have already taken place before the death of the surety.

Conclusion

In the given question, Abhishek (guarantor) died after 15th month. This will operate as a revocation of a continuing guarantee as to the future transactions taking place after the death of surety (i.e. Abhishek). However, the Abhishek's estate remains liable for the past transactions (i.e. 15th month and before) which have already taken place before the death of the surety.

Q.18 Manish, a minor, lost his parents in COVID-19 pandemic. Due to poor financial background Manish was facing difficulties in maintaining his livelihood. He approached Mr. Sohel (a grocery shopkeeper) to supply him grocery items and to wait for some period for receiving his dues. Mr. Sohel did not agree with the proposal; but when Mr. Ganesh, a local person, who is a major, agreed to provide guarantee that he would pay the dues in case Manish fails to pay the amount, Mr. Sohel supplied the required groceries to Manish. After few months when Manish failed to clear his dues, Mr. Sohel approached Mr. Ganesh and asked him to clear the dues of Manish. Mr. Ganesh refused to pay the amount on two grounds; firstly, that there was no consideration in the contract of guarantee and secondly that Manish is a minor and therefore on both the grounds the contract of guarantee is not valid.

Referring to the relevant provisions of the Indian Contract Act, 1872, decide, whether the contention of Mr. Ganesh, (the surety) is tenable? Will your answer differ in case both Manish (the principal debtor) and Mr. Ganesh (the surety) are minors?

(4 marks)

Answer:

***Legal Provisions* - As per Section 127 of the Indian Contract Act, 1872,** consideration received by the principal debtor is sufficient consideration to the surety for giving the guarantee.

Even if the Principal debtor is incompetent to contract, the guarantee is invalid.

But, if the surety is incompetent to the contract, the guarantee is void

Analysis

Manish, a minor lost his parents in the COVID-19 Pandemic. He was facing financial difficulties. Manish approached Sohel (a grocery shopkeeper) to supply him with grocery items and to wait for some period to receive his dues. Mr. Sohel did not agree. But, when Mr. Ganesh. 'a major, agreed to provide a guarantee that he would pay the dues in case Manish failed to pay the amount. Mr. Sohel supplied the required groceries to Manish. After a few months, when Manish failed to clear his dues, Mr. Sohel approached Mr. Ganesh and asked him to clear the dues. Mr. Ganesh refused to pay the amount on two ground;
Firstly, there was no consideration in the contract of guarantee and secondly that Manish is a minor and therefore, on both grounds, the contract of guarantee is invalid.

Conclusion

In the present case, the contention of Mr. Ganesh is not tenable. Mr. Ganesh cannot refuse Mr. Sohel to clear to dues of Manish. Even if Manish (Principal debtor) is a Minor, the contract of guarantee will be valid.
If Manish and Ganesh were both minors, then the contract of Guarantee would be invalid as Mr. Ganesh is a surety, and if a surety is a minor, the contract of guarantee is invalid.

Q19) Rama directs Shyam to sell laptops for him and agrees to give Shyam eleven percent (11%) commission on the sale price fixed by Rama for each laptop. As Government of India put restrictions on import of Laptops, Rama thought that the prices of laptops might go up in near future and he revokes Shyam's authority for any further sale. Shyam, before receiving the letter at his end sold 5 laptops at the price fixed by Rama. Shyam asked for 11% commission on the sale of 5 Laptops for ` 1 lakh each. Explain under the provisions of the Indian Contract Act, 1872:
(1) Whether sale of laptops after revoking Shyam's authority is binding on Rama?
(2) Whether Shyam will be able to recover his commission from Rama, if yes, what will be the amount of such commission?

(3 Marks)

Answer:

Legal Provisions

When termination of agent's authority takes effect as to agent, and as to third persons [Section 208 of the Indian Contract Act, 1872]: The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.

Analysis and Conclusion

In the instant case,
(1) The revocation of Shyam's authority becomes effective only when it is communicated to and received by Shyam. Since Shyam had not received the revocation letter at the time of selling the laptops, his authority to sell on behalf of Rama was still valid. Hence, the sale of laptops conducted by Shyam is binding on Rama.
(2) Shyam is entitled to receive his commission for the sales made while he still had the authority to sell. Since he sold the laptops before receiving the revocation, he is entitled to his commission as per the initial agreement with Rama.
Amount of Commission: Shyam sold 5 laptops at the price fixed by Rama, which is `1 lakh each. The total sales amount to `5 lakh. The agreed commission rate is 11% i.e. ` 55,000.

20) X was running a business of Car on lease. One fine day, Y came to hire a car for 10 days for his business tour from Delhi to Amritsar. X offered him a Honda city for ` 50,000/- for 10 days on a condition that petrol and toll expenses will be borne by him. During the journey, engine of car was choked. Y has to spend ` 10,000/- for repair of engine. When he was coming back from Amritsar, brakes of car were not working and a major accident of Y happened due to this. Y was admitted to hospital and paid a bill of ` 50,000 on recovery. Y asked X to compensate him charges for car repair and hospital expenses amounting ` 60,000/-. X denied for compensation by saying that he was not aware about the engine and brakes fault. Y filed a suit against X for recovery of damages. Give your opinion with reference to provisions of the Indian Contract Act, 1872:

(i) Whether Y can withheld the amount of hire charges ` 50,000/- on account of non-payment of damages?

(ii) Whether Mr. X was liable to pay Damage as he was not aware of the fact of faults in car?

Answer

(a) Bailment: As per Section 148 of the Indian Contract Act, 1872, bailment is the delivery of goods by one person to another for some purpose, upon a contract, that the goods shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them.

Bailor's duty to disclose faults in goods bailed in case of non- gratuitous bailment (Section 150): If the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.

Duty to pay necessary expenses in case of non-gratuitous bailment [Section 158]: The bailor is liable to pay the extraordinary expenses incurred by the bailee.

Bailor's responsibility to indemnify losses [Section 164]: It is the duty of bailor to indemnify all the losses and expenses, which bailee has to pay on account of defective goods.

In the instant case, Y took a car on lease from X for 10 days for ` 50,000. During the journey, Y has to spend ` 10,000 for repair of engine and paid

` 50,000 for hospital expenses due to accident because of fault in brakes of car. These are the extraordinary expenses and losses and it is the bailor's duty to bear such expenses and losses.

Therefore, the answers are:

(i) Y can withhold the hire charges of ` 50,000 on account of non- payment of damages and claim an additional `10,000, from X.

(iii) X is liable for the full ` 60,000 (`10,000 repair + ` 50,000 hospital) as it is the bailor's duty to supply a car fit for the purpose for which it was hired.

21) Mr. VG and Mr. PG were trading in unlisted shares for the last seven years. They used to borrow funds from each other whenever required for any trade. Within a week's time, they used to refund the money to each other as per circumstances of the case. They were following this practice for the last five years. On 25th January 2025, Mr. PG wants to buy 20,000 shares of an unlisted company @ ` 500/- each. But due to insufficiency of funds, he asked Mr. VG for ` 40 lakhs. Mr. VG transferred ` 40 lakhs to

Mr. PG. After about three months, Mr. VG reminded that Mr. PG had not refunded ` 40 lakhs to him till then. He asked him to pay back his money. Mr. PG told him that he was trying very hard to sell the shares at a reasonable price of 10% more than the price at which he bought these shares but was unable to do so due to market conditions. He asked Mr. VG to sell his shares on his behalf and authorised him to appropriate the amount of loan of ` 40 lakhs with interest out of the sale proceeds. Mr. VG agreed to do so.

After about 15 days, when market started recovering Mr. PG denied and revoked the authorization by saying that he would sell his shares himself.
With reference to provisions of the Indian Contract Act, 1872, whether the revocation of said agency by Mr. PG was lawful? (3 Marks)

Answer
According to Section 202 of the Indian Contract Act, 1872 an agency becomes irrevocable where the agent has himself an interest in the property which forms the subject-matter of the agency and such an agency cannot, in the absence of an express provision in the contract, be terminated to the prejudice of such interest.
The rule of agency coupled with interest applies and does not come to an end even on death, insanity or the insolvency of the principal.
In the instant case, Mr. PG appointed Mr. VG to sell his shares on his behalf and authorized him to appropriate the amount of loan of ` 40 lakh with interest out of the sale proceeds.
Since, interest was created in favour of Mr. VG, thus the revocation of the said agency is not lawful

22) State with reference to the provisions of the Indian Contract Act, 1872 whether the following are True or False with justification.
(i) The pledge of documents of title to goods by a mercantile agent with the consent of an owner is invalid pledge.
(ii) A appoints B as his agent to sell A's land. Subsequently, under the authority of A, B appoints C as his agent. Later on, A revokes the authority of B, but not that of C. Consequently, the authority of C cannot be terminated.
(iii) The contract of life insurance is not fully covered under the contract of indemnity. (6 Marks)

Answer
(c) (i) The given statement is False
Justification: According to Section 178 of the Indian Contract Act, 1872, a mercantile agent, who is in the possession of goods or document of title, with the consent of owner, can pledge them while acting in the ordinary course of business as a Mercantile Agent.
Provided such Pledge shall be valid as if were made with the authority of the owner of goods and the Pawnee has acted in good faith and has no notice that the Pawnor has no authority to pledge.
(ii) The given statement is False
Justification: According to Section 210 of the Indian Contract Act, 1872, the termination of

the authority of an agent causes the termination (subject to the rules herein contained regarding the termination of an agent's authority) of the authority of all sub-agents appointed by him. In the given question, B is the agent of A, and C is the agent of B. Hence, C becomes a sub agent. Thus, when A revokes the authority of B(agent), it results in termination of authority of sub agent appointed by B i.e. C (sub-agent).

(iii) The given statement is True

Justification: As per Section 124 of the Indian Contract Act, 1872, the term "Contract of Indemnity" is defined as "a contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other

23) R owns an electronics store. P visited the store to buy a water purifier priced at `54,000/-. He specifically requested R for a purifier with a copper filter. As P wanted to buy the purifier on credit, with the intention of paying in 9 equal monthly instalments, R demands a guarantor for the transaction. S (a friend of P) came forward and gave the guarantee for payment of water purifier. R sold P, a water purifier of a specific brand. P made payment for 4 monthly instalments and after that became insolvent. Explain with reference to the Indian Contract Act, 1872, the liability of S as a guarantor to pay the balance price of water purifier to R.

What will be your answer, if R sold the water purifier misrepresenting it as having a copper filter, while it actually has a normal filter? Neither P nor S was aware of this fact and upon discovering the truth, P refused to pay the price. In response to P's refusal, R filed the suit against S, the guarantor. Explain with reference to the Indian Contract Act 1872, whether S is liable to pay the balance price of water purifier to R? (7 Marks)

Answer

(a) As per section 126 of the Indian Contract Act, 1872, the contract of guarantee is defined as a contract to perform the promise or discharge the liability of a third person in case of his default.

In this case, S has given a guarantee for P's payment obligation towards R. When P defaulted after making four monthly instalments and became insolvent, S's liability as a guarantor will come into existence.

According to Section 128 of the Act, the liability of the surety is co- extensive with that of the principal debtor, unless it is otherwise provided by the contract.

Since P failed to pay the remaining instalments due to insolvency, S, as the guarantor, is liable to pay the balance price of the water purifier to R. In the given situation, S will have to pay the balance amount of ` 30,000 to R. [54,000-(4x6,000)]

In the second situation, R sold the water purifier misrepresenting it as having a copper filter, while it actually has a normal filter; this changes the situation significantly.

According to Section 142 of the Act, any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid. Here, guarantee is obtained by means of misrepresentation made by the creditor (R), and therefore the guarantee is invalid.

Furthermore, under Section 143, any guarantee which the creditor has obtained by means of keeping silence as to material circumstances, is invalid.

Here R misrepresented the filter type and both P and S were unaware of this fact. The creditor (R) has obtained the guarantee by remaining silent as to material circumstances. Therefore, the guarantee obtained from S will be considered to be invalid.
Consequently, S cannot be held liable to pay the balance price of the water purifier to R.

24) ABC Infrastructure Ltd. was running business successfully from several years. P was the purchase manager of company. He authorized his agent Q to buy Raw Material on his behalf for construction of Roads in Delhi. He instructed Q to buy only Mazboot Brand of Cement @ ` 2,000 – 2,500 per ton to maintain quality of Roads in Delhi. However, Q bought 1,000 tons of Mazboot Brand of cement from Mr. R a very well-known vendor of ABC Infrastructure Ltd. @ `3,500/- per ton. Mr. Q has not disclosed the fact to R that he was buying cement for ABC Infrastructure Ltd. When P discovered this aspect, he refused to pay Mr. R and rejects the cement bought by Q on the ground that Q has exceeded the authority. Mr. R suffered a huge loss on account of this transaction. Give your opinion in accordance with provisions from the Indian Contract Act, 1872:
(i) Whether P was bound to pay Mr. R for cement purchased by his agent Mr. Q?
(ii) On the other hand, Q being agent refused to accept any liability to compensate R. In this situation, Whether Mr. R can file a suit against Q? (7 Marks)

Answer
(a) Principal's liability when agent exceeds authority [Section 227 of the Indian Contract Act, 1872]: When an agent does more than he is authorised to do, and when the part of what he does, which is within his authority, can be separated from the part which is beyond his authority, so much only of what he does as is within his authority is binding as between him and his principal.
Principal not bound when excess of agent's authority is not separable [Section 228]: Where an agent does more than he is authorized to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognize the transaction.
When the agent exceeds his authority, misleads the third person in believing that the agent has the requisite authority in doing the act, then the agent can be made liable personally for the breach of warranty of authority.
When the agent does not disclose the name of the principal then there arises a presumption that he himself undertakes to be personally liable.
In the instant case, Q violated the instructions of P by buying cement at
` 3,500 per ton, which is beyond the authorized price limit. Furthermore, Q did not disclose to R that he was buying cement for ABC Infrastructure Ltd.
Therefore, the answers are
(i) No, P was not bound to pay Mr. R, as the agent Q exceeded his authority, and the deviation was inseparable from the authorized act.
(ii) Yes, Mr. R can file a suit against Q, as Q is personally liable for the contract made without disclosing about the ABC Infrastructure Ltd. and exceeding the authority given by the principal.

Alternative Answer

In the light of the given facts in the question, P, the Purchase Manger of the ABC Infrastructure Ltd., authorised Q his agent to buy raw material on his behalf for construction of roads in Delhi. He instructed Q to buy only Mazboot brand of cement @ ` 2000-2,500 per ton. However, Q, violated the instructions of P by buying cement at `3,500 per ton. Furthermore, he did not disclose to R that he was buying cement for ABC Infrastructure Ltd.

The stated issue marked in the question is related to the undisclosed principal and exceeding of his authority. Given situation can be dealt with the provisions under section 230, 231 & 233 of the Indian Contract Act.

According to the provision stated in section 230, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them. He can neither sue nor be sued on contracts made by him on his principal's behalf.

However, there are exceptions where the agent is presumed to have agreed to be personally bound.

Where the agent does not disclose the name of his principal or undisclosed principal (Principal unnamed), then there arises a presumption that he himself undertakes to be personally liable. Also, when the agent exceeds his authority, misleads the third person in believing that the agent has the requisite authority in doing the act. In that case the agent can be made liable personally for the breach of warranty of authority.

Further section 231 of the Indian Contract Act specifies rights of third parties to a contract made by undisclosed agent.

As per the provision, if an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, his principal may require the performance of the contract; but the other contracting party has, as against the principal, the same right as he would have had as against the agent if the agent had been the principal.

Section 233 gives the option to a third person to sue the Agent or the Principal. In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them, liable.

Therefore, the following are the answers:

(i) No, P was not bound to pay Mr. R for purchase of the cement @ ` 3500/- per ton, as the agent Q does not disclose the name of his principal and also exceeded his authority, thus making himself to be personally bound and liable for the doing of said transaction.

(ii) Yes, in the light of the section 233, Mr. R is given an option to sue the agent or the Principal or both. Yes, R can file a suit against Q, as Q is personally liable for the contract made without disclosing about the ABC Infrastructure Ltd. and exceeding the authority given by the P (principal).

25) Raghav found gold and diamond studded wristwatch value approximately ₹ 1,00,000/- on the roadside. He picked it up and then advertised in the newspaper that the true owner thereof can take the watch after showing proper evidence. After waiting for a certain period of time, when the true owner did not tum up, he gifted that wristwatch to his son Mahesh. A few days later, Madhav, the true owner of watch, somehow noticed his watch on wrist of Mahesh. He approached him to collect the same, but Mahesh refused. In the evening, Raghav called Madhav and told him that he

incurred ₹ 20,000 to find the true owner if he fails to reimburse him the lawful expenses incurred on finding out the true owner, he will sue him for recovery thereof or retain the possession of the watch with him till recovery. Even he can sell the watch for recovery of expenses. Advise whether the following actions of Raghav were lawful according to provisions of The Indian Contract Act, 1872:

(A) Gifting the wristwatch to his son.

(B) Warning Madhav to sue for recovery of lawful expenses incurred in finding true owner.

(C) Retaining the possession of wristwatch till recovery of lawful expenses.

(D) Selling of wristwatch for recovery of expenses.

7 Marks

Answer

Responsibility of finder of goods (Section 71 of the Indian Contract Act, 1872): A person who finds goods belonging to another and takes them into his custody is subject to same responsibility as if he were a bailee.

Thus, a finder of lost goods has:

(i) to take proper care of the property as man of ordinary prudence would take

(ii) no right to appropriate the goods and

(iii) to restore the goods if the owner is found.

The right of finder of lost goods- may sue for specific reward offered [Section 168]: The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him in finding the owner and preserving the goods found. But he has a right to retain the goods against the owner until he receives such compensation.

When finder of thing commonly on sale may sell it [Section 169]: When a thing which is commonly the subject of sale if lost, if the owner cannot with reasonable diligence be found, or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it—

(1) when the thing is in danger of perishing or of losing the greater part of its value, or

(2) when the lawful charges of the finder in respect of the thing found amount to two-thirds of its value.

Hence, the answers are:

(A) Gifting the wristwatch to his son Mahesh is unlawful. Raghav had no ownership rights over the watch and could not legally transfer it to someone else.

(B) Warning Madhav to Sue for Recovery of Lawful Expenses: Raghav has no right to sue Madhav for the expenses voluntarily incurred by Raghav in finding the owner.

(C) Retaining Possession of the Wristwatch Until Recovery of Lawful Expenses: Raghav's action of retaining the wristwatch until Madhav reimburses him for lawful expenses is valid.

(D) Selling of Wristwatch for Recovery of Expenses: the watch is not perishable, and the expenses claimed (₹ 20,000) are far below two-thirds of the value of the watch (₹ 1,00,000). Therefore, Raghav does not have the right to sell the watch under these circumstances, and

selling the watch would be unlawful.

26) Nova Electronics contracted with Delta Components Ltd. for the supply of 10,000 custom-designed microchips at ₹ 500 per chip, with a strict delivery deadline of November 1, 2023. The purchase order from Nova to Delta included the following clause: "These chips are critical for assembling devices for our client, SkyTech Innovations. Any delay will disrupt our delivery schedule and result in significant penalties."
Delta Components Ltd. acknowledged the order but did not comment on this clause. Due to a sudden fire at its main manufacturing plant, Delta informed Nova on October 25 that it would be impossible to deliver the chips. Nova Electronics immediately began searching for an alternative supplier.
They managed to source the chips from a foreign supplier at ₹ 650 per chip. However, the earliest delivery date was December 15, 2023. Due to this 45-day delay, SkyTech Innovations levied a penalty of ₹ 8,00,000 on Nova Electronics for missing their delivery deadline. Furthermore, Nova had to pay ₹ 2,00,000 in overtime wages to their assembly line workers to expedite production once the chips finally arrived.
Advise Nova Electronics on the amount of compensation they can claim from Delta Components Ltd. under the Indian Contract Act, 1872. Discuss the legal principles applicable to each head of claim.

Answer
Legal Provision:
This case is governed by Section 73 of the Indian Contract Act, 1872. The aggrieved party is entitled to compensation for losses:
Naturally arising in the usual course from the breach, or
Which were within the contemplation of both parties at the time of contract as a probable result of the breach.
Compensation is not awarded for remote or indirect losses.
Analysis of Claims:
Claim for Higher Procurement Cost (₹ 15,00,000): [10,000 chips * (₹650 - ₹500)]
Verdict: RECOVERABLE.
Reasoning: This is a direct loss that naturally arises from a seller's breach of a supply contract. It represents the additional cost incurred to mitigate the damage by procuring equivalent goods from the next best source. This is a classic application of Section 73.
Claim for Penalty Paid to SkyTech (₹ 8,00,000):
Verdict: RECOVERABLE.
Reasoning: This is a consequential loss, but its recoverability hinges on the knowledge of Delta Components. The purchase order explicitly stated the chips were "critical" for a specific client and that delay would cause "significant penalties." By acknowledging the order with this clause, Delta is deemed to have accepted the special circumstances. The loss from the penalty was a foreseeable consequence of their breach, making them liable. The fire (force majeure) might excuse Delta's performance but not necessarily their financial liability for breach unless the contract specifically provided for such an exemption.

Claim for Overtime Wages (₹ 2,00,000):
Verdict: NOT RECOVERABLE.
Reasoning: This is an indirect and remote consequence. While the breach caused a delay, the decision to pay overtime to expedite production is an internal operational decision by Nova. It is not a loss that flows naturally from the breach in the usual course of things, nor was it something Delta could have reasonably contemplated as a likely result of their breach. This is a mitigating action whose cost is borne by the aggrieved party.
Conclusion:
Nova Electronics can successfully claim ₹ 23,00,000 (₹ 15,00,000 + ₹ 8,00,000) from Delta Components Ltd. as compensation for the breach of contract. The claim for overtime wages is too remote and is not recoverable. Delta's liability for the penalty is established due to their prior knowledge of the special circumstances, which brings the loss within the scope of Section 73.

27) Mr. Arjun entered into a contract with Mr. Bhuvan on January 1, 2024. The contract stated that Mr. Bhuvan would sell his vintage car to Mr. Arjun for ₹ 10,00,000, but only if Mr. Bhuvan's son, who was working abroad, decided not to take the car with him upon his return to India on March 31, 2024.
On February 15, 2024, Mr. Bhuvan's son called him and confirmed that he would not be returning to India and had settled abroad permanently. Consequently, the condition in the contract was fulfilled.
On March 1, 2024, before Mr. Arjun could be informed or make the payment, the vintage car was completely destroyed in a fire at Mr. Bhuvan's garage. The fire was an accident and no one was at fault.
Mr. Arjun is now demanding that Mr. Bhuvan either deliver another similar vintage car or return his advance payment. Mr. Bhuvan refuses, stating that the car was destroyed before the sale could be finalized.
Based on the provisions of the Indian Contract Act, 1872:
a) Is Mr. Bhuvan liable to deliver the car or compensate Mr. Arjun?
b) Explain the relevant legal principle governing this situation. (4 Marks)

Answer
a) Is Mr. Bhuvan liable to deliver the car or compensate Mr. Arjun?
No, Mr. Bhuvan is not liable to deliver the car or pay compensation.
b) Explain the relevant legal principle governing this situation.
The relevant principle is covered under Section 32 of the Indian Contract Act, 1872.
This section deals with "Contingent Contracts."
A contingent contract is a contract to do or not to do something, if some event, collateral to such contract, happens or does not happen.
The contract between Mr. Arjun and Mr. Bhuvan was contingent on a future uncertain event: whether Mr. Bhuvan's son would decide to take the car or not. This event was collateral to the contract of sale.
Section 32 further states: "Contingent contracts to do or not to do anything if a future uncertain event happens, cannot be enforced by law unless and until that event has

happened."
In this case, the contingent event (the son's decision not to take the car) did happen on February 15, 2024. At that moment, the contract became enforceable.
However, Section 32 also implies that if the event becomes impossible, the contingent contract becomes void.
Here, the subject matter of the contract (the car) was destroyed after the condition was fulfilled but before the contract could be executed (i.e., before the sale was finalized by payment and delivery).
The destruction of the specific car—which was the basis of the contract—renders the performance impossible. This impossibility discharges Mr. Bhuvan from his contractual obligation.
Since the destruction was due to an accident and not due to any fault of Mr. Bhuvan, he is not liable for failure to perform.
Conclusion: The contract became enforceable but was subsequently discharged by supervening impossibility. Therefore, Mr. Bhuvan's obligation to perform ceased, and he is not liable. Mr. Arjun's remedy is limited to the recovery of any advance payment he might have made, as there was a failure of consideration.

CHAPTER - SOGA

Q.28 Sonal went to a Jewellery shop and asked the sales girl to show her diamond bangles with Ruby stones. The Jeweller told her that we have a lot of designs of diamond bangles but with red stones if she chooses for herself any special design of diamond bangle with red stones, they will replace red stones with Ruby stones. But for the Ruby stones they will charge some extra cost. Sonal selected a beautiful set of designer bangles and paid for them. She also paid the extra cost of Ruby stones. The Jeweller requested her to come back a week later for delivery of those bangles. When she came after a week to take delivery of bangles, she noticed that due to Ruby stones, the design of bangles has been completely disturbed. Now , she wants to terminate the contract and thus, asked the manager to give her money back, but he denied for the same. Answer the following questions as per the Sale of Goods Act, 1930.
(i) State with reasons whether Sonal can recover the amount from the Jeweller.
(ii) What would be your answer if Jeweller says that he can change the design, but he will charge extra cost for the same? (6 marks)

Answer:

Legal Provisions

As per the Sale of Goods Act, 1930, where under a contract of sale, the property in the goods is transferred from the seller to the buyer, the contract is called that of a sale, but where the transfer of property in goods is to take place at a future date, subject to fulfilment

of some condition, the contract is called an agreement to sell.
An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject - to which the property in goods is to be transferred.

Analysis

On the basis of above provisions and facts given in the question, it can be said that there in an agreement to sell between Sonal and Jeweller but not a sale. Even the payment made was by Sonal, the property in bangles can be transferred only after the fulfilment of conditions fixed between buyer and seller.

Conclusion

Since, during the replacement of the Ruby stones, the original design has disturbed, Sonal has the right to avoid the agreement to sell and can recover the price paid.
On the other hand, if Jeweller offers to bring the bangles in original position by repairing, he cannot charge extra cost from Sonal. Even he has to bear some expenses for repair, he cannot charge it from Sonal.

Q.29 Mr. A contracted to sell his swift car to Mr. B. Both missed to discuss the price of the said swift car. Later, Mr. A refused to sell his swift car to Mr. B on the ground that the agreement was void being uncertain about the price. Does Mr. B have any right against Mr. A under the Sale of Goods Act, 1930? (4 marks)

Answer:

Legal Provisions

As per Section 9 of Sale of Goods Act, 1930,

1. the price in a contract of sale may be fixed by the contract or may be left to be fixed in manner thereby agreed or may be determined by the course of dealing between the parties.
2. where the price is not determined in accordance with the foregoing provisions, the buyer shall pay the seller a reasonable price. Estimation of reasonable price, depends upon the circumstances of each particular case. In the above case A contracted to sell his swift car to B but missed to discuss the price. Later, A refused to sell his car to B on the grounds that the agreement was uncertain as the price was not discussed and declared the contract to be void.

Conclusion

Here B can legally demand the car from A and A can recover a reasonable price of the car from B as the contract of sale is still a valid contract even if the price was uncertain.

Q 30 Sony, a friend of Priya wanted to buy her two-wheeler. Priya agreed to sell her two-wheeler to Sony and it was decided that price of her two-wheeler will be fixed by Priya's father, who is an auto dealer. Priya immediately handed over the keys to Sony. However, Priya's father refused to fix the price as he did not want Priya to sell her vehicle. Priya expressed her inability to sell the two-wheeler to Sony and asked for return, but Sony refused to return the same.
Explain-
(i) Can Priya take-back the vehicle from Sony?

(ii) Will your answer be different, if Priya had not handed over the vehicle to Sony?
(7 Marks)

Answer:

Legal Provisions:

Ascertainment of price (Section 9 of the Sale of Goods Act, 1930):
By virtue of Section 9, the price in a contract of sale may be-
(1) fixed by the contract, or
(2) agreed to be fixed in a manner provided by the contract, e.g., by a valuer, or
(3) determined by the course of dealing between the parties.

Agreement to sell at valuation (Section 10):
Section 10 provides for the determination of price by a third party.
1. Where there is an agreement to sell goods on the terms that price is to be fixed by the valuation of a third party and that third party either does not or cannot make such valuation, the agreement is thereby avoided.
However, a buyer who has received and appropriated the goods, must pay a reasonable price for them.
2. In case the third party is prevented from making the valuation by the default of either party, the party not at fault may maintain a suit for damages against the party in fault.

Analysis:
In the instant case, Priya handed over the keys of her twowheeler to Sony and it was decided between them that price of the vehicle will be fixed by Priya's father. However, Priya's father refused to fix the price as he did not want Priya to sell her vehicle.

Conclusion
(i)As the keys have already been handed over to Sony, Priya cannot take back the keys from Sony and Sony shall pay reasonable price to Priya for the two-wheeler.
(ii) If Priya had not handed over the vehicle to Sony, the contract could have been avoided as Priya's father refused to fix the price of the vehicle.

Q.31 M/S Woodworth & Associates, a firm dealing with the wholesale and retail buying and selling of various kinds of wooden logs, customized as per the requirement of the customers. They dealt with Rose wood; Mango wood; Teak wood; Burma wood etc.
Mr. Das a customer came to the shop and asked for wooden logs measuring 4 inches broad and 8 feet long as required by the carpenter. Mr. Das specifically mentioned that he required the wood which would be best suited for the purpose of making wooden doors and window frames. The Shop owner agreed and arranged the wooden pieces cut into as per the buyers requirements.
The carpenter visited Mr. Das's house next day, and he found that the seller has supplied Mango Tree wood which would most unsuitable for the purpose. The carpenter asked Mr. Das to return the wooden logs as it would not meet his requirements.
The Shop owner refused to return the wooden logs on the plea that logs were cut to specific requirements of Mr. Das and hence could not be resold.

(i) Explain the duty of the buyer as well as the seller according to the doctrine of "Caveat Emptor'.
(ii) Whether Mr. Das would be able to get the money back or the right kind of wood as required serving his purpose? (6 marks)

Answer:

Legal Provisions

Caveat emptor means "let the buyer beware", i.e. in sale of goods, the seller is under no duty to reveal unflattering truths about the goods sold. Therefore, when a person buys some goods, he must examine them thoroughly. If the goods turn out to be defective or do not suit his purpose, or if he depends upon his skill and judgement and makes a bad selection, he cannot blame any body except himself.

The rule is enunciated in the opening words of **Section 16 of the Sale of Goods Act, 1930,** which runs thus, "subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale."

The rule of caveat emptor does not apply in the following case:

Fitness for buyer's purpose :

Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which he requires the goods and relies on the seller's skill or judgement and the goods are of a description which it is in the course of the seller's business to supply, the seller must supply the goods which shall be reasonably fit for the buyer's purpose.

Analysis

In the given case Mr. Das had clearly intimated the seller of his specific purpose and the goods supplied by the seller were totally unfit for that purpose. The seller is bound to supply the goods that are reasonably fit for the purpose.

Conclusion

Held, the contract is avoidable by Mr. Das and he holds full right to either get his money back or to get right kind of wood as required for his purpose.

Q.32 TK ordered timber of 1 inch thickness for being made into drums. The seller agreed to supply the required timber of 1 inch. However, the timber supplied by the seller varies in thickness from 1 inch to 1.4 inches. The timber is commercially fit for the purpose for which it was ordered. TK rejects the timber. Explain with relevant provisions of the Sale of Goods Act, 1930 whether TK can reject the timber. (3 marks)

Answer:

Legal Provisions

As per the provisions of the Sale of Goods Act, 1930. The doctrine of Caveat emptor is subject to the exception of fitness as to quality or use. Which states that where the buyer makes known to the seller the particular purpose for which the goods are required, so as to show that he relies on seller's skill or judgement and the goods are of a description which is in the course of seller's business to supply, it is the duty of the seller to supply such goods as are reasonably fit for that purpose **[Section 16(1)]**

Analysis and Conclusion

In the present case timber was purchased for the purpose of making the drums. However, the timber supplied by the seller varies in thickness from 1 inch to 1.4 inches. Now it is

clearly mentioned that timber is commercially fit for the purpose for which it was ordered hence that contract could not be avoided. **[Bombay Burma Trading Corporation Ltd. Vs Aga Mohammad.]**

Q.33 Mr. K visited M/s Makhrana Marbles for the purchase of marble and tiles for his newly built house. He asked the owner of the above shop Mr. J to visit his house prior to supply so that he can clearly ascertain the correct mix and measurements of marble and tiles. Mr. J agreed and visited the house on the next day. He inspected the rooms in the first floor and the car parking space. Mr. K insisted him to visit the second floor as well because the construction pattern was different. Mr. J ignored the above suggestion.
Mr. J, supplied 146 blocks of marble as per the size for the rooms and 16 boxes of tiles with a word of caution that the tiles can bear only a reasonable weight. Marble and Tiles were successfully laid except on second floor due to different sizes of the marble. The tiles fitted in the parking space also got damaged due to the weight of the vehicle came for unloading cement bags. Mr. K asked Mr. J for the replacement of marble and tiles to which Mr. J refused taking the plea that the marble were as per the measurement and it was unsafe to fit tiles at the parking area as it cannot take heavy load. Discuss in the light of provisions of Sales of Goods Act 1930:
(i) Can Mr. J refuse to replace the marble with reference to the doctrine of Caveat Emptor? Enlist the duties of both Mr. K and Mr. J.
(ii) Whether the replacement of damaged tiles be imposed on M/S Makhrana Marbles? Explain. (6 marks)
Answer: (i) Yes, Mr. J can refuse to replace the marble as he has supplied the marble as per the requirement of the buyer, i.e., Mr. K.

Duty of Mr. K (the buyer) is that he has to examine the marbles and tiles carefully and should follow the caution given by Mr. J, i.e., the seller, that tiles can bear only a reasonable weight before laying them in the parking space of his house.

Duty of Mr. J (the seller) is that the goods supplied (i.e., tiles and marbles) shall be reasonably fit for the purpose for which the buyer wants them.

According to the doctrine of **Caveat Emptor**, it is the **duty of the buyer to satisfy himself before buying the goods that the goods** will serve the purpose for which they are being bought.In this case, Mr. K has accepted the marbles **without examination**. Hence, there is **no implied condition as regards defects** in marbles. Mr. J can refuse to replace the marble as he has supplied the marble as per the requirement of the buyer, i.e., Mr.

34) Mrs. Kavya visited a grain merchant and asked for 200 kg of premium Basmati rice, long-grain only. The merchant showed her a bowl of rice as sample, saying the bulk would be the same. The sample appeared to be long-grain Basmati and matched the description given by Kavya. She paid in advance and agreed to delivery in 3 days.
On delivery:
The bulk looked similar to the sample, and Kavya casually inspected only the top layer.

When her cook used the rice, he found that though the outer grains resembled Basmati, a large part of the bulk contained adulterated broken grains mixed inside.
Kavya returned to the merchant and demanded refund, but the merchant refused, arguing:
The bulk matched the sample shown.
She had an opportunity to inspect the goods but failed to do so thoroughly.
Once she accepted delivery, she cannot later reject the goods.
Kavya wants to know whether she can:
(i) Reject the goods and recover her money under the Sale of Goods Act, 1930.
(ii) Alternatively, claim it as fraud against the seller. (6 Marks)

Answer
Legal Provisions
Section 17, Sale of Goods Act, 1930 (Sale by Sample):
(a) The bulk must correspond with the sample in quality.
(b) The buyer must have a reasonable opportunity of comparing the bulk with the sample.
(c) The goods must be free from latent (hidden) defects not apparent on reasonable examination of the sample.
Section 15 (Sale by Description): Goods must correspond with the description if sold by description.
Principle: If sale is by sample + description, goods must correspond to both sample and description.
Analysis of the Case
Correspondence with Sample: The sample shown was long-grain Basmati. The bulk appeared similar but on closer use revealed adulterated broken grains inside. This defect was not visible on reasonable examination of sample, making it a latent defect. Under Section 17(2)(c), seller is liable.
Correspondence with Description: Kavya had specified "premium long-grain Basmati only." The bulk supplied did not meet this description as it contained broken grains. Under Section 15, there is a breach of condition.
Opportunity of Examination: Though Kavya casually checked the top layer, latent defects mixed within could not be discovered by reasonable examination at the time of delivery. Thus, she is protected under Section 17(2)(c).
Fraud Claim: If seller knowingly mixed inferior grains inside the bulk while showing a pure sample, it may also amount to fraudulent misrepresentation.
Conclusion
Kavya can reject the entire consignment and recover her money, since the bulk did not correspond to the sample and description, and contained latent defects.
The seller's defence of "opportunity to examine" fails because the defect was hidden.
Additionally, if fraudulent intent is proved, Kavya may also sue the seller for fraud.

35) M/s FreshMart (Buyer) entered into a contract with M/s GrainEx (Seller) for 1,500 kg of premium Basmati rice with the following terms:
The rice must be grown in Uttarakhand, and
Packed in yellow bags of 25 kg each.

On delivery, the seller supplied:
300 kg of rice grown in Uttarakhand and correctly packed in yellow 25 kg bags (fully conforming),
700 kg of rice grown in Punjab but packed correctly in yellow 25 kg bags,
500 kg of rice grown in Uttarakhand but packed in blue 30 kg bags.
The buyer, who has urgent supply contracts with hotels, asks:
Can he reject the entire consignment even though 300 kg matches perfectly?
If he accepts the full supply to avoid business loss, what legal remedy remains available to him? (5M)

Asnwer
Legal Provisions
Section 15, Sale of Goods Act, 1930: In a contract of sale by description, there is an implied condition that goods shall correspond with the description. If not, the buyer may reject them.
Section 13, Sale of Goods Act, 1930: If there is a breach of condition, the buyer may waive the condition or elect to treat it as a breach of warranty, in which case he cannot repudiate the contract but may claim damages.
Entire vs. Severable Contracts: If goods are contracted as a whole consignment, the buyer can reject the entire lot if any part fails to conform, unless he agrees to severance.
Analysis of the Case
The contract required rice from Uttarakhand and packing in yellow 25 kg bags.
Out of 1,500 kg delivered:
Only 300 kg matched both conditions.
The remaining 1,200 kg failed on either origin or packing.
Since the contract was for 1,500 kg as a single bulk supply, and not separate contracts for parts, it is an entire contract.
Therefore, even though 300 kg conformed, the buyer can legally reject the whole consignment as the bulk does not correspond with the description.
However, if the buyer elects to accept the goods to fulfil onward contracts, he may treat the breach as a breach of warranty under Section 13 and sue the seller for damages.
Conclusion
The buyer is entitled to reject the entire 1,500 kg consignment, since the supply, taken as a whole, did not match the description agreed in the contract.
If he accepts the goods to avoid loss in his business contracts, he cannot later repudiate the sale but may claim damages from the seller for non-conforming supply.

36) Mr. Rohan runs an electronics showroom specializing in high-end washing machines. Mr. Kunal visited his shop and told him: "I need a washing machine especially suitable for washing delicate silk and woollen clothes. I will rely on your recommendation."
Mr. Rohan pointed out a particular model, assuring it was suitable. Mr. Kunal purchased it and paid in full. Later, when the machine was delivered, it turned out to be:

a different model from the one shown at the shop, and
completely unsuitable for washing silk and woollen clothes, often damaging them.
When Kunal complained, Rohan refused to exchange, saying: "The contract was complete once I delivered the machine and received payment. You cannot now repudiate."
Question: With reference to the Sale of Goods Act, 1930, discuss whether Mr. Rohan is justified in refusing replacement and what rights Mr. Kunal has. (5M)

Answer
Legal Provisions
Section 15 (Sale by Description): Goods must correspond with the description given; if not, the buyer may reject.
Section 16(1) (Fitness for Purpose): Where the buyer makes known the particular purpose for which goods are required and relies on the seller's skill or judgment, there is an implied condition that goods shall be reasonably fit for that purpose.
Section 16(2) (Merchantable Quality): When goods are bought from a seller dealing in such goods, they must be of merchantable quality.
Buyer's Remedies: On breach of implied condition, the buyer may reject goods, repudiate the contract, or claim replacement/refund.
Analysis of the Case
Mr. Kunal specified the purpose (washing silk and woollen clothes) and relied on Rohan's skill/judgment.
The machine delivered was:
Different from the model shown → breach of condition under Section 15 (description).
Unfit for the specific purpose required → breach of implied condition under Section 16(1).
The fact that delivery was made and payment accepted does not end buyer's rights, because conditions relating to description and fitness are continuing obligations.
Therefore, Mr. Rohan is wrong in refusing replacement.
Conclusion
Mr. Rohan cannot refuse replacement on the ground that the contract was complete after delivery.
Mr. Kunal is entitled to repudiate the contract, demand refund, or require a replacement machine conforming to description and fitness for purpose.

Q.37 Mr. G sold some goods to Mr. H for certain price by issue of an invoice, but payment in respect of the same was not received on that day. The goods were packed and lying in the godown of Mr. G. The goods were inspected by H's agent and were found to be in order. Later on, the dues of the goods were settled in cash. Just after receiving cash, Mr. G asked Mr. H that goods should be taken away from his godown

to enable him to store other goods purchased by him. After one day, since Mr. H did not take delivery of the goods, Mr. G kept the goods out of the godown in an open space. Due to rain, some goods were damaged.
Referring to the provisions of the Sale of Goods Act, 1930, analyse the above situation and decide who will be held responsible for the above damage. Will your answer be different, if the dues were not settled in cash and are still pending?
(6 marks)

Answer:
According to the facts of this case it stands pretty much clear to the judgement of an independent observer that the property in the goods sold by Mr. G had already passed to Mr. H after the payment of dues and the examination of goods by the agent of Mr. H. Hence it can be easily concluded that the liability for damage suffered by the goods would fall on the buyer i.e. Mr. H and not Mr. G since the transfer of title of the goods had already taken place before the damage occurred.

Q.38 Ms. R owns a Two Wheeler which she handed over to her friend Ms. K on sale or return basis. Even after a week Ms. K neither returned the vehicle nor made payment for it. She instead pledged the vehicle to Mr. A to obtain a loan. Ms. R now wants to claim the Two Wheeler from Mr. A. Will she succeed?
(i) Examine with reference to the provisions of the Sale of Goods Act, 1930, what recourse is available to Ms. R?
(ii) Would your answer be different if it had been expressly provided that the vehicle would remain the property of Ms. R until the price has been paid?
(6 marks)

Answer:
Goods sent on approval or on sale or return basis **(Section 24) of the Sales of Goods Act, 1930.**
When the goods are delivered to the buyer on approval or on sale or return basis or other similar terms the property therein passes to the buyer.
(a) When he signifies his approval or acceptance to the seller or does any other act adopting the transaction.
(b) If he does not signify his approval or acceptance to the seller but retains the goods on the expiration of such time, if no time has been fixed, then on the expiration of the reasonable time.
(c) he does something to the goods which is equivalent to accepting the goods.
But sometimes, it may be noted that where goods have been delivered by a person on 'Sale or return' on the terms that the goods well to remain the property of the sellers till they are paid for, the property therein does not pass to the buyer until the terms are complied with i.e. cash is paid for.
In the given case Ms. R owns a two wheeler which she handed over to her friend Ms. K on sale or return basis. After a week Ms. K neither returned the vehicle nor made payment for it. She instead pledge the vehicle to Mr. A to obtain a loan.
(i) Thus, according to this case Mr. R has no right against Mr. A. He can only recover the price of the two wheeler from Ms. K.

(ii) Yes, my answer will be different if it had been expressly provided that the vehicle would remain the property of Mr. R until the price has been paid then it says that at the time of pledge the ownership was not transferred to Mr. K. Thus, the pledge was not valid and R can recover from the two wheeler from A as well.

Q.39 Mr. T was a retail trader of fans of various kinds. Mr. M came to his shop and asked for an exhaust fan for kitchen. Mr. T showed him different brands and Mr. M approved of a particular brand and paid for it. Fan was delivered at Mr. M's house; at the time of opening the packet he found that it was a table fan. He informed Mr. T about the delivery of the wrong fan. Mr. T refused to exchange the same, saying that the contract was complete after the delivery of the fan and payment of price.

(i) Discuss whether Mr. T is right in refusing to exchange as per provisions of Sale of Goods Act, 1930?

(ii) What is the remedy available to Mr. M?

(6 marks)

Answer:

***Legal Provision*:**

According to Section 15 of Sales of Goods Act, 1930. Where there is a contract of sale of goods by description, there is an implied condition that the goods shall correspond with the description. This rule is based on the principle that "if you contract to sell peas, you cannot compel the buyer to take beans." The buyer is not bound to accept and pay for the goods which are not in accordance with the description of goods.

Thus, it has to be determined whether the buyer has undertaken to purchase the goods by their description, i.e., whether the description was essential for identifying the goods where the buyer had agreed to purchase. If that is required and the goods tendered do not correspond with the description, it would be breach of condition entitling the buyer to reject the goods. It is a condition which goes to the root of the contract and the breach of it entitles the buyer to reject the goods whether the buyer is able to inspect them or not.

Fact: Here in the given problem, Mr. M went to Mr. T's (retail trader) shop and asked for exhaust fan and approved a particular brand and paid for it. The fan which was delivered at M's house was a table fan. So, he asked Mr. T to exchange the same but Mr. T refused to do so.

***Conclusion*:**

Applying the above legal provision is the given problem we can conclude as follows:

(1) Mr. T is not right he can't refuse to exchange the fan as the goods are not according to description. Buyer has asked for exhaust fan and seller has supplied table fan condition as to description is breached.

(2) Remedy available to Mr. M - Mr. M can repudiate / rescind the contract, i.e. he can return the table fan and ask for damages or both.

Q.40 Against B's tender, R agrees to sell and deliver 1,000 kg tomatoes @ ₹ 100 per kg which shall be delivered on 15th July, 2023. Due to the rise of the prices of tomatoes in the market, R delivered only 700 kg of tomatoes on 15th July, 2023 and agrees to deliver the balance quantity in the next month. B accepted 700 kg of tomatoes sent by R. Later, R failed to deliver the balance quantity and so B refused to pay the price of 700 kg of tomatoes to R as he had failed to fulfill the tender conditions stipulated in the contract of sale. Can B refuse to pay R as per the provisions of the Sale of Goods Act, 1930?
(2 Marks)

Answer:

According to **Section 37(1) of the Sale of Goods Act, 1930**, where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if he accepts the goods so delivered, he shall pay for them at the contract rate.
In the instant case, R delivered 700 kg of tomatoes on 15th July, 2023 and agrees to deliver 300 kg in the next month. Later R failed to deliver the balance quantity and B (buyer) refused to pay the price of 700 kg of tomatoes.
Considering the above provisions, we can conclude that B cannot refuse to pay for 700 kg of tomatoes to R.

Important Note: The answer can also be given as per **Section 34 of the Sale of Goods Act, 1930**, which provides that a delivery of part of goods, in progress of the delivery of the whole has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole.
In the instant case, R delivered 700 kg of tomatoes on 15th July, 2023 and agrees to deliver 300 kg in the next month. Later R failed to deliver the balance quantity and B (buyer) refused to pay the price of 700 kg of tomatoes.
Considering the above provisions, we can conclude that B cannot refuse to pay for 700 kg of tomatoes to R.

Q41 M/s RK Traders (Buyer) made a contract with M/s CK Traders (Seller) for purchase of 2000 kg of basmati rice specifically grown in Chhattisgarh State should be packed in pink colour bags of 25 kg each to identify the place of origin by specifying the mode of packing ofbasmati rice. The seller agreed for specific packing of rice grown in Chhattisgarh State. However, by misunderstanding, staff of seller packed the quantity of 1800 kg of basmati rice grown in the State of Maharashtra in white colour bags of 30 kg each and the remaining quantity of 200 kg, grown in Chhattisgarh State, in pink colour bags of 25 kg each. Referring to the provisions of the Sale of Goods Act, 1930 analyse, whether the buyer has the right to reject the entire quantity of basmati rice supplied by the seller.
On the other hand what is the remedy available to buyer if he has to accept the entire quantity to fulfil his other contracts with other parties?
(4 Marks)

Answer:

***Legal Provision*:**

According to Section 15 of the Sale of Goods Act, 1930, where there is a contract of sale of goods by description, there is an implied condition that the goods shall correspond with the

description. The buyer is not bound to accept and pay for the goods which are not in accordance with the description of goods.

Analysis and conclusion

In the instant case, the contract specified that the basmati rice should be grown in Chhattisgarh, packed in pink colour bags of 25 kg each but the seller mistakenly packed 1800 kg of rice from Maharashtra in white bags of 30 kg each, and only 200 kg of rice from Chhattisgarh in the correct pink bags.
Therefore, the buyer has the right to reject the entire quantity of basmati rice supplied by the buyer as the goods do not correspond with the description

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ANSWER TO SECOND PART

In case the buyer has to accept the entire quantity of rice to fulfil his other contracts with other parties, he can claim damages which provides that where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.

Q.42 AB sold 500 bags of wheat to CD. Each bag contains 50 Kilograms of wheat. AB sent 450 bags by road transport and CD himself took remaining 50 bags. Before CD receives delivery of 450 bags sent by road transport, he becomes bankrupt. AB being still unpaid, stops the bags in transit. The official receiver, on CD's insolvency claims the bags. Decide the case with reference to the provisions of the Sale of Goods Act, 1930. (3 marks)

Answer: The problem is based on **Section 50 of the Sale of Goods Act, 1930** dealing with the right of stoppage of the goods in transit available to an unpaid seller. The Section states that the right is exercised by the seller only if the following conditions are fulfilled:-

(i) The seller must be unpaid.
(ii) He must have parted with the goods
(iii) The goods must be in transit.
(iv) The buyer must have become insolvent.
(v) The right is subject to the provisions of the Act.

Applying the provisions to the given case, AB being still unpaid, can stop the delivery of 450 bags sent by the transport as these goods are still in transit.

Q43 PTC Hotels in Bombay decided to sell their furniture by auction sale. For this purpose, they appointed RN & Associates as auctioneer. They invited top ten renowned Architects in Bombay for bidding. A right to bid was not notified by them. Furniture was put up in lots for sale. It was decided that for every lot of furniture there will be a reserve price. On 25th Feb 2024, Auction sale was started at 10.am in the lawn of PTC Hotels Bombay. For aspecial lot of furniture three parties came for bidding Mr. Neel, Mr. Raj and Mr. Dev on behalf of their respective companies. Bidding was as follows:

Mr. Neel ` 5.70 lakh
Mr. Raj ` 4.85 lakh
Mr. Dev ` 6.10 lakh

The sale was completed in favour of Mr. Neel by RN & Associates by fall of hammer. Mr. Dev's Bid was rejected on ground that Right to bid was reserved and company of

Mr. Dev was not invited to bid. For another bid of Italian Furniture was made by two parties as follows:
Mr. Dheer ` 15 lakh
Mr. Madhu
(on behalf of R N & Associates) ` 15.20 lakh
Sale was completed in favour of Mr. Dheer instead of Mr. Madhu. Mr. Dev and Mr. Madhu argued that auction sale was not lawful. Give your opinion with reference to provisions of the Sale of Goods Act, 1930 whether Auction Sale will be considered lawful or not? (7 Marks)

Answer:-

Legal Provisions

An 'Auction Sale' is a mode of selling property by inviting bids publicly and the property is sold to the highest bidder. Section 64 of the Sale of Goods Act, 1930 regulates the legal requirements for the sale by auction. In terms of the provisions of the above Section, following are some of the requirements, which *inter alia* are required to be complied with for conduct of a valid auction sale- **SUGGESTED ANSWER**

(i) Where the goods are sold in lots: Where the goods are put up for sale in lots, each lot is *prima facie* deemed to be subject of a separate contract of sale.

(ii) Right to bid may be reserved: Right to bid may be reserved expressly by or on behalf of the seller and where such a right is expressly reserved, but not otherwise, the seller or any one person on his behalf may bid at the auction.

(iii) Where the sale is not notified by the seller: Where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer.

(iv) Reserved price: The sale may be notified to be subject to a reserve or upset price;

Analysis and Conclusion

In the first Auction sale, the rejection of Mr. Dev's bidding was not justified since the information as to the right to bid was not expressly given. Therefore, this auction sale was unlawful.

In auction sale of lot 2, since right to bid was not notified, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale. Therefore, auction made in favour of Mr. Dheer will be considered lawful.

Q44) M/s Orion Textiles (Seller) sold 1,000 bales of cotton to M/s Zenith Garments (Buyer) on 60 days' credit. The goods were dispatched from Nagpur to Mumbai by rail and consigned "to self," with the railway receipt endorsed and sent to Zenith for taking delivery.
Facts:
While goods were still in transit, Zenith became insolvent.
Seller instructed the railway company to stop delivery.
Meanwhile, Zenith had already transferred the railway receipt to M/s Apex Fashions (a sub-buyer) in good faith and for consideration.
Before Seller's stoppage order reached, Apex presented the railway receipt at Mumbai, took delivery of part of the goods, and paid Zenith.
Seller now claims he can exercise stoppage in transit against both Zenith and Apex. (5M)

Answer
Legal Provisions (Sec. 50, Sale of Goods Act, 1930)

An unpaid seller has the right to stop goods in transit if:
The buyer becomes insolvent; and
Goods are in transit.
Transit continues while goods are with a carrier or bailee until delivered to buyer or his agent. Transit ends when:
Buyer or his agent obtains delivery;
Carrier acknowledges goods as held on buyer's behalf; or
Buyer transfers the document of title to a bona fide sub-buyer for value.
If goods are already delivered to such a bona fide transferee, seller's right of stoppage is defeated.
Analysis of the Case
Zenith became insolvent while goods were in transit → seller's right of stoppage arose.
However, Zenith had already transferred the railway receipt (document of title) to Apex, a bona fide purchaser for value, without notice of insolvency.
Under Sec. 50 read with Sec. 53, such transfer defeats the seller's right of stoppage.
Since Apex presented the railway receipt and obtained delivery of part of the goods, seller's right of stoppage is extinguished for those goods.
For any goods still undelivered, seller may exercise stoppage in transit against them.
Conclusion
Seller cannot stop the goods already delivered to Apex, since Apex obtained title in good faith for value.
Seller may exercise stoppage only against the balance of goods still in transit.
Against Zenith, the seller's personal remedy remains (to sue for price as an unpaid seller).

Q45) Ashok, a trader, delivered a camera to Mangesh on 'sale or return' basis. Mangesh delivers the camera to Rahul on the terms of 'sale for cash only or return'. Afterward, Rahul delivered it to Vishal on a 'sale or return' basis without paying cash to Mangesh. The camera, which was in the possession of Vishal was lost by theft though he exercised due care for its safety. Referring to the provisions of the Sale of Goods Act, 1930, analyse the situation and advise, whether Mangesh, Rahul or Vishal are, jointly or severally, liable to pay the price of the camera to Ashok. (4 Marks)

Answer
As per the provisions of section 24 of the Sale of Goods Act, 1930, when goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property therein passes to the buyer when he does something to the good which is equivalent to accepting the goods
e.g. he pledges or sells the goods.
Referring to the above provisions, we can analyse the situation given in the question.
Since, Mangesh, who had taken delivery of the camera on Sale or Return basis and delivers the same to Rahul on sale for cash only or return, has attracted the third condition that he has done something to the good which is equivalent to accepting the goods e.g. he pledges or sells the goods. Therefore, the property therein (Camera) passes to Mangesh.
Now, Rahul delivered it to Vishal on a sale or return without paying cash to Mangesh.
Since Rahul did not pay cash and had not exercised the option to purchase, ownership of the camera did not pass to Rahul. Therefore, Rahul is not liable to pay the price of the camera either.
Since Vishal did not accept the goods and the camera was lost by theft (despite his due care), Vishal is not liable for the price of the camera as ownership had not passed to him.
Therefore, Mangesh is solely liable to pay the price of the camera to Ashok, as he accepted the camera on a "sale or return" basis and did not return it within a reasonable time.

Q46) Ansari of Jaipur sold 100 smart TV set @ ` 50,000/- per set to Baburam of Delhi. He delivered the TV sets to Chetan, a transport carrier for transmission to Baburam. Baburam further sold these 100 TV sets to Shayamlal @ ` 60,000/- per set. On reaching the goods at the destination, Baburam demanded the delivery but Chetan, wrongfully, refused to deliver the goods to Baburam. That is why; he failed to deliver TV sets to Shayamlal and suffered a huge loss on account of non-delivery. Ansari came to know about this. He directed Chetan to stop the delivery to Baburam and re-deliver the goods to him at Jaipur.
Answer the following questions under the provisions of the Sale of Goods Act, 1930:
(A) Whether Ansari has right to stop the goods in transit?
(B) Whether Baburam can claim loss suffered due to non-delivery from Ansari? (3 Marks)

According to Section 51 of the Sale of Goods Act, 1930, when the carrier wrongfully refuses to deliver the goods to buyer, the right of stoppage in transit is lost and transit comes to an end.
On the other hand, according to section 57 of the Sale of Goods Act, 1930, where buyer suffers losses due to non-delivery, he can sue seller for damages on account of non-delivery.
In the instant case, the transit came to an end when Chetan wrongfully refused to deliver the goods to Baburam, and he suffered a huge loss due to non- delivery. Hence, Ansari cannot exercise the right of stoppage of goods in transit as the transit has already come to an end.
Baburam can claim loss suffered due to non-delivery from Ansari.

47) MNO Limited, a supplier of electronic components, entered into a contract on August 1, 2023, with PQR Enterprises for the sale of 1000 units of microchips. The contract specifically identified the microchips by serial numbers and confirmed that they were in a deliverable state, stored in MNO Limited's warehouse. The contract stipulated that the goods would be delivered on September 1, 2023.
On August 10, 2023, a flood occurred, damaged the warehouse and destroyed the entire stock of microchips, including the 1000 units intended for PQR Enterprises. Examine, with reference to the provisions of the Sale of Goods Act, 1930 who shall suffer the loss? What will be your answer if the microchips are not specifically identified and marked for PQR Enterprises at the time of the contract? (4 Marks)

Answer

According to Section 18 of the Sale of Goods Act, 1930, where there is a contract of sale for unascertained goods, the property in goods cannot pass to the buyer unless and until the goods are ascertained. The buyer can get the ownership right on the goods only when the goods are specific and ascertained.
According to section 20 of the Sale of Goods Act, 1930, where there is an unconditional contract for sale of specific goods in deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of price or the time of delivery of the goods, or both, is postponed. Here, the condition is goods must be ready for delivery.
In the instant case, since the microchips were specifically identified and were in a deliverable state when the contract was formed on August 1, 2023, ownership (and risk) likely passed to PQR Enterprises on August 1, 2023.
Therefore, PQR Enterprises will suffer the loss.

Goods are not specifically identified and ascertained:
If the microchips were not specifically identified and marked for PQR Enterprises at the time of the contract, MNO Limited will suffer the loss, as the risk would not have transferred to PQR Enterprises.

48) A purchases a motorcycle from B and uses it for some time. It turns out that the motorcycle sold by B to A was a stolen one and had to be returned to a rightful owner. A brings action against B for the return of the price. Will he succeed? Examine this with reference to the provisions of the Sale of Goods Act, 1930. (3 Marks)

Answer
As per Section 27 of the Sale of Goods Act, 1930, "no one can transfer a better title than they themselves have." This means that a person who is not the owner of goods cannot convey ownership unless authorized by the true owner.
Also, Section 14(a) imposes an implied condition in every contract of sale that the seller has the right to sell the goods means he should be the real owner. If the seller's title turns out to be defective, the buyer must return the goods to the true owner and recover the price from the seller.
In the instant case, A will succeed in his action against B for the return of the price, as B had no title to sell the stolen motorcycle, and the sale was in breach of the implied condition.

Q 49) The Institute of Science, Pune (the buyer), placed an order for various chemicals worth ` 1,50,000 from a supplier in Delhi (the seller). The buyer made full advance payment, and the seller dispatched the consignment via a courier of his own choice, without reserving any right of disposal over the goods. The consignment was lost in transit, and now the buyer seeks a refund of the purchase price. With reference to the provisions of the Sale of Goods Act, 1930, assess the validity of the buyer's claim for a refund. (4 Marks)

Answer
Delivery of the goods to the carrier [Section 23(2) of the Sale of Goods Act, 1930]: Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract.
In the instant case, the Institute of Science, Pune placed an order for various chemicals worth ` 1,50,000 from a supplier in Delhi. The seller dispatched the consignment via a courier without reserving any right of disposal over the goods. The consignment was lost in transit. According to Section 23(2), it is an unconditional appropriation of goods because of which the Institute of Science, Pune (buyer) has become the owner of the goods. Therefore, it will bear the risk of loss of the consignment in the way. Hence, the buyer's claim is not valid.

Q50) Adarsh visited an authorized car showroom and purchased a car of his choice without conducting a detailed inspection. After making the payment and taking delivery of the car, he discovered a defect in the engine that could not have been detected even with a reasonable inspection. With reference to the provisions of the Sale of Goods Act, 1930, advise, whether Adarsh can invoke the implied condition of merchantability and repudiate the contract due to the defect in the car.
(3 Marks)

Answer

(ii) Condition as to Merchantability [Section 16(2) of the Sale of Goods Act, 1930]:
Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality.
There are two requirements for this condition to apply:
(a) Goods should be bought by description.
(b) The seller should be a dealer in goods of that description.
Provided that, if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.
The expression "merchantable quality", though not defined, nevertheless connotes goods of such a quality and in such a condition a man of ordinary prudence would accept them as goods of that description. It does not imply any legal right or legal title to sell.
In the instant case, the defect in the engine could not have been detected even with a reasonable inspection.
Therefore, Adarsh can invoke the implied condition of merchantability and is entitled to repudiate the contract due to the defect in the car

CHAPTER 4 INDIAN PARTNERSHIP ACT, 1932

Q.51 State whether the following are partnerships:

(i) A and B jointly own a car which they used personally on Sundays and holidays and let it on hire as taxi on other days and equally divide the earnings.
(ii) Two firms each having 12 partners combine by an agreement into one firm.
(iii) A and B, co-owners, agree to conduct the business in common for profit.
(iv) Some individuals form an association to which each individual contributes ₹ 500 annually. The objective of the association is to produce clothes and distribute the clothes free to the war widows.
(v) A and B, co-owners share between themselves the rent derived from a piece of land.
(vi) A and B buy commodity X and agree to sell the commodity with sharing the profits equally. (6 marks)

Answer:

Legal Provisions

The definition of the partnership contains the following five elements which must co-exist before a partnership can come into existence :
(a) Partnership is an association of two or more persons.
(b) The partnership must be a result of an agreement entered into by all persons concerned.
(c) Partnership is organized to carry on some business.
(d) The agreement must be to share the profits of the business.
(e) The business must be carried on by all or any of them acting for all.
In the given situations if they satisfy any of the following conditions then they will be called as a partnership. Also if 'they' satisfy the true test of partnership condition i.e., Agreement,

sharing of profit and Agency.

Analysis and Conclusion

(i) A and B jointly own a car which they used personally on Sundays and holidays and let it on hire as taxi on other days and equally divide the earnings creates an agreement between them for sharing of profits and mutual agency. Hence, it is a partnership.

(ii) Two firms each having 12 partners combine by an agreement into one firm is a partnership as they satisfy the above mentioned basic conditions.

(iii) A and B, co-owners agree to conduct the business in common for profit is a partnership as it is satisfying the basic conditions to form a partnership.

(iv) Some individuals form an association with an object of charity do not amounts to become a partnership as they have created a Not- for- profit organization which does not carry the basic requirements of agreement between them, sharing of profits and mutual agency. Hence, it is not a partnership.

(v) A and B, co-owners share between themselves the rent derived from a piece of land is not a partnership as it is lacking the mutual agreement between them.

(vi) A and B brought commodity X without an agreement only to share profits equally does not amounts to a partnership.

Q.51 X, Y and Z are partners in a Partnership Firm. They were carrying their business successfully for the past several years. Spouses of X and Y fought in ladies club on their personal issue and X's wife was hurt badly. X got angry on the incident and he convinced Z to expel Y from their partnership firm. Y was expelled from partnership without any notice from X and Z. Considering the provisions of the Indian Partnership Act, 1932, state whether they can expel a partner from the firm. What are the criteria for test of good faith in such circumstances? (6 marks)

Answer:

Legal Provisions

A partner may not be expelled from a firm by any majority of the partners, except in exercise of good faith of power conferred by contract between the partners. If all these conditions are not present, the expulsion is not deemed to be in bonafide interest of the business of the firm.

The test of good faith as required includes three things:

(a) The expulsion must be in the interest of the partnership.

(b) The partner to be expelled is served with a notice.

(c) He is given an opportunity of being heard.

If a partner is otherwise expelled, the expulsion is null and void.

Conclusion

Having regard to above we can say that expulsion of partner 'Y' by X & Z is not in accordance with the provision of Indian Contract Act and thus not valid.

Q.52 Mr. A, Mr. B and Mr. C were partners in a partnership firm M/s ABC & Co., which is engaged in the business of trading of branded furniture. The name of the partners was clearly written along with the firm name in front of the head office of the firm as

well as on letter-head of the firm. On 1st October, 2018, Mr. C passed away. His name was neither removed from the list of partners as stated in front of the head office nor from the letter-heads of the firm. As per the terms of partnership, the firm continued its operations with Mr. A and Mr. B as partners. The accounts of the firm were settled and the amount due to the legal heirs of Mr. C was also determined on 10th October, 2018. But the same was not paid to the legal heirs of Mr. C. On 16lh October, 2018, Mr. X, a supplier supplied furniture worth ₹ 20,00,000 to M/s ABC & Co. M/s ABC & Co. could not repay the amount due to heavy losses. Mr. X wants to recover the amount not only from M/s ABC & Co., but also from the legal heirs of Mr. C.
Analyse the above situation in terms of the provisions of the Indian Partnership Act, 1932 and decide whether the legal heirs of Mr. C can also be held liable for the dues towards Mr. X. (3 marks)

Answer:

Legal Provisions

According to the facts of this case the situation existent clearly indicates the application of **Section 37 of the Indian Partnership Act, 1932** according to which where any member of a firm has died or otherwise ceased to be partner and the surviving or continuing partners carry on the business of the firm without any final settlement of the accounts as between them and the outgoing partner of his estate, then in the absence of a contract to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest at the rate of six percent per annum on the amount of his share in the property of the firm.

Conclusion

In this case since there has been no decisive settlement of accounts between the heirs of Mr. C and Mr. A & Mr. B so it's pretty clear that the interest of the heirs of Mr. C is still existent in the profits and property of the firm and Mr. X wants to recover the amount not only from M/s ABC & Co. but also from the legal heirs of Mr. C he is justified in claiming such a recovery and his claim is legal and just according to the provisions of **Section 37.**

53) Mr. Arjun and Mr. Bilal, both lecturers in a college, jointly purchased a shop in Delhi as co-owners. They rented it out to Mr. Charles for ₹20,000 per month. It was agreed that rent would be inclusive of property tax, which the landlords would pay.
By mistake, they failed to pay the property tax of ₹4,000 for April 2023. Due to this, the municipal authority sealed the shop temporarily. Charles paid the dues and penalty of ₹500 to reopen the shop.
Charles then demanded ₹4,500 from Arjun. Arjun replied that he is liable only for ₹2,250 (his half share). Charles insisted: "You and Bilal are partners in this property. As partners, you are jointly and severally liable. I can recover the full amount from you."
Question: Referring to the provisions of the Indian Partnership Act, 1932, decide whether Charles can recover the full ₹4,500 from Arjun. (5 – Marks)

Answer

Legal Provisions

Section 4, Indian Partnership Act, 1932: Partnership is a relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

Essential conditions:

Agreement between persons.

Agreement must be to carry on business.

Agreement must be to share profits of that business.

Business carried on by all or any of them acting for all.

Co-ownership (e.g., joint purchase of property) does not amount to partnership merely because income is shared.

Analysis of the Case

Arjun and Bilal are co-owners of the shop, not partners.

Renting out property is not "carrying on a business" within the meaning of Section 4; it is simply enjoying property income.

Since no partnership exists, the rule of joint and several liability of partners does not apply.

Arjun's liability is only to the extent of his share in ownership, i.e., half of ₹4,500 = ₹2,250.

Charles must claim the balance from Bilal.

Conclusion

Charles cannot treat Arjun and Bilal as partners.

Arjun is liable only for his half share (₹2,250).

Charles must recover the remaining ₹2,250 from Bilal.

54) Ram and Shyam are partners in a firm named RS & Co. Gaurav, a wealthy businessman and their friend, attended a trade exhibition with them.

At the stall of RS & Co., in the presence of several suppliers and financiers, Gaurav himself announced:

"I have recently joined RS & Co. as a partner, and I am investing heavily in this business."

Facts:

Relying on this, Sahil, a supplier, immediately supplied raw materials worth ₹3 lakhs on credit.

Madhav, a financier who was also present in the exhibition, advanced ₹10 lakhs loan to the firm two days later.

Another businessman, Anil, who only read about Gaurav's statement in a trade magazine but never heard it personally, also gave goods on credit worth ₹5 lakhs.

Later, the firm defaulted on all payments. Gaurav claims he is not a partner and cannot be held liable. (5 Marks)

Answer

Legal Provisions (Sec. 28, Indian Partnership Act, 1932):

Any person who represents himself, or knowingly permits himself to be represented, as a partner is liable as a partner to anyone who, on the faith of such representation, gives credit to the firm.

Representation may be:

By words (spoken or written), or
By conduct (silence or behaviour implying consent).
If representation is made publicly, liability may extend to all who relied on it in good faith.

Analysis of the Case

Sahil: Gaurav personally represented himself as partner; Sahil relied on this and supplied goods → Gaurav is liable.
Madhav: Present during the representation; acted on it in good faith → Gaurav is liable.
Anil: Relied only on a magazine report, not on Gaurav's direct representation. Courts have held that hearsay or media reports cannot bind the alleged partner unless representation was made publicly and authorised. Since Gaurav did not make the statement in a trade magazine but only at an event, liability to Anil is doubtful.

Conclusion

Gaurav is liable as a partner by holding out to Sahil and Madhav, since they directly relied on his representation.
Gaurav is not liable to Anil, as his reliance was based on a trade magazine report, not on Gaurav's representation.

Q55 Master X was introduced to the benefits of partnership of M/s ABC & Co. with the consent of all partners. After attaining majority, more than six months elapsed and he failed to give a public notice as to whether he elected to become or not to become a partner in the firm. Later on, Mr. L, a supplier of material to M/s ABC & Co., filed a suit against M/s ABC & Co. for recovery of the debt due.
In the light of the Indian Partnership Act, 1932, explain.
(i) To what extent X will be liable if he failed to give public notice after attaining majority?
(ii) Can Mr. L recover his debt from X?
(6 marks)

Answer:

Legal Provisions

A minor who is admitted to the benefits of a partnership firm during his minority, must within six months of his attaining the age of majority or when he comes to know of his being so admitted (whichever date is later) he has to elect whether he wants to become a partner, or sever his connection with the firm. He may give public notice of his election to continue or repudiate but if he fails to give any public notice within the period stated above, he will be deemed to have elected to become a partner in the firm. Since, then he will be liable as other partner to the third parties for all acts of the firm done since he was admitted to the benefits of partnership.

Analysis and Conclusion

In the given case.
(i) X will be liable to all third parties if he failed to give public notice after attaining majority.
(ii) Yes, Mr. L a supplier to the firm, can recover his debt from x.

Q.56 P, Q, R and S are the partners in M/S PQRS & Co., a partnership firm which deals

in trading of Washing Machines of various brands. Due to the conflict of views between partners, P & Q decided to leave the partnership firm and started competitive business on 31st July, 2019, in the name of M/S PQ & Co. Meanwhile, R & S have continued using the property in the name of M/S PQRS & Co. in which P & Q also has a share.

Based on the above facts, explain in detail the rights of outgoing partners as per the Indian Partnership Act, 1932 and comment on the following:

(i) Rights of P & Q to start a competitive business.

(ii) Rights of P & Q regarding their share in property of M/S PQRS & Co.

(6 marks)

Answer:

Legal Provisions

(i) **Right of an outgoing partners to carry on a competing business (Section 36)**
An outgoing partner may carry on a competing business with that of the firm and he may advertise such business but subject to the following conditions:
(a) He may not use the firm name
(b) He may not represent himself as a partner in the business of the firm.
(c) He may not solicit the custom of persons who well dealing with the firm before he ceased to be a partner. A partner may make an agreement with his partner that on ceasing to be a partner he will not carry on any business similar to that of the firm within a specified period or within a specified local limits shall be valid.

(ii) **Right of an outgoing partner in shall of profits (Section 37):** When a partner ceases to be a partner in a firm and the continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner then the outgoing partner shall be liable to such profits made since he ceases to be a partner in a firm from the use of his property in the firm or 6% interest on the property of the firm whichever is higher.

Analysis

Thus, in the given case P Q R & S all the partner or in P Q R S & Co. due to conflict P & Q left the firm and started a new firm in the name of P & Q Co. meanwhile R & S continued the same business in the same name of P Q R S & Co.

Conclusion

Thus,
(i) P & Q has the following rights to start a competitive business as stated above in **Section (36)**
(ii) P & Q will have a shall in the property of P Q R S & Co., according to the terms and conditions of **Section (27) of the Indian Partnership Act, 1932** which are property stated and explained above the following paragraph of this page.

Q.57 M/S ABC Associates is a partnership firm since 1990. Mr. A, Mr. B and Mr. C were partners in the firm since beginning. Mr. A, Being a very senior partner of aged 78 years transfers his share in the firm to his son Mr. Prateek, a Chartered Accountant. Mr. B and Mr. C were not interested that Mr. Parteek join them as partner in M/S ABC

Associates. After some time, Mr. Prateek felt that the books of accounts were displaying only
a small amount as profit despite a huge turnover. He wanted to inspect the book of accounts of the firm arguing that it is his entitlement as a transferee. However, the other partners believed that he cannot challenge the books of accounts. Can Mr. Prateek, be introduced as a partner if his father wants to get a retirement? As an advisor, help them resolve the issues applying the necessary provisions from the Indian Partnership Act, 1932. (6 marks)

Answer:

Legal Provisions

1. As per the Indian Partnership Act, 1932,

(i) A share in a partnership is transferable like any other property,

(ii) But as the partnership relationship is based on mutual confidence,

(iii) The assignee of a partner interest by sale, mortgage or otherwise cannot enjoy the same rights and privileges as the original partner.

2. The rights of such transferee are as follows:

(i) When the firm is continuing in business-

(a) Transferee is not entitled

- to interfere with the conduct of the business
- to require account, or
- to inspect the books of the firm.

(b) Transferee is only entitled to receive the share of profits of the transferring partner and he is bound to accept the profits as agreed to by the partners (ie. he cannot challenge the account.)

(ii) On retirement of the transferring partner or on dissolution of the firm-

(a) Transferee is entitled to receive the share of the assets of the firm to which the transferring partner was entitled.

(b) To ascertain his share, he is entitled to an account as from the date of the dissolution or retirement as the case may be.

Analysis and Conclusion

Hence, we can say that Mr. Prateek cannot be introduced as a partner in the firm as other partners have not agreed for the same. However, Mr. A can transfer his interest to Mr. Prateek But Mr. Prateek cannot enjoy all the rights of a partner. Therefore, Mr. Prateek cannot challenge the books of accounts.

Q58 Referring to the provisions of the Indian Partnership Act, 1932, answer the following:
(i) Ram and Shyam are partners in a partnership firm styled as RS & Co. (the firm). Gopal, a renowned businessman, is their common friend. Ram introduced Gopal Sundar, a supplier to the firm, as his newly joined partner. Gopal knowing that he is not a partner preferred to keep quiet on such an introduction. This information about Gopal, being a partner of the firm, was shared by Sundar with another businessman Madhav. Next day, Sundar supplied the raw material on credit and Madhav lent ` 5 lakhs to the firm for a short period on the understanding that Gopal is a partner of the

firm. On due dates, the firm failed to discharge its liability towards both. Advise Gopal, whether he is liable to Sundar and Madhav for the aforesaid liability of the firm. (3 Marks)

Answer:

Legal Provisions :

Partner by holding out (Section 28 of the Indian Partnership Act, 1932):

Anyone who by words spoken or written or by conduct represents himself, or knowingly permits himself to be represented, to be a partner in a firm, is liable as a partner in that firm to anyone who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.

Analysis and conclusion

In the instant case, since Gopal allowed himself to be represented as a partner to the RS & Co. and third parties acted based on this belief and therefore, Gopal is held liable to Sundar as he represented himself by his act to be a partner to the RS & Co.

However, Gopal is not liable to Madhav for the liabilities incurred by the firm. Information of Gopal being a partner to the firm was shared by the Sundar (Supplier to the firm) which is not falling within the ambit of doctrine of holding out.

Hence Gopal is liable to Sundar and not to Madhav for the liability of the Firm.

59) M/s Sunrise & Co., a partnership firm carrying on business of trading in steel, consisted of four partners — P, Q, R, and S. The partnership was at will, and no written deed was executed.

Facts:

Mutual disagreement: P and Q proposed dissolution of the firm by mutual consent (Sec. 40). R disagreed, insisting the business had potential.

Notice of dissolution: On 1st July 2023, Q gave a written notice of dissolution under Sec. 43, stating the firm would stand dissolved from 1st August 2023.

Grounds of misconduct: Meanwhile, R discovered that S had diverted firm's funds to his personal account and approached the Court under Sec. 44(d) (partner guilty of misconduct).

Creditor's action: A major creditor of the firm also filed a petition in Court seeking dissolution, as the firm had defaulted in repayment of a substantial loan.

Disputes arose:

R argued that Q's notice was invalid since the Court was already considering dissolution on misconduct grounds.

S argued that misconduct was a personal matter and not enough to dissolve the whole firm.

P argued that since two partners (P and Q) already agreed, the firm stood dissolved under Sec. 40.

Question: With reference to the Indian Partnership Act, 1932, examine:

Whether the firm can be dissolved by mutual agreement despite R's objection.

Validity of Q's notice of dissolution under Sec. 43.

Whether Court may dissolve the firm on grounds of misconduct by S.

Effect of the creditor's suit for dissolution. (8M)

Answer

Legal Provisions

Section 40: Firm may be dissolved by agreement of all partners or according to terms of the contract.
Section 43: In a partnership at will, any partner may dissolve the firm by giving notice in writing to all partners; firm dissolves from the date mentioned in notice.
Section 44: Court may dissolve firm on several grounds, including:
(d) Partner guilty of misconduct, making it not reasonably practicable to carry on business;
(f) Firm's business has become continuously unprofitable;
(g) Any other just and equitable ground.
Creditors' rights: A creditor cannot directly dissolve the firm but may apply to Court, and Court may order dissolution in equity to protect creditors.

Analysis of the Case
Mutual Agreement (Sec. 40): Requires consent of all partners. Since R objected, no valid dissolution by mutual agreement took place. P's argument is invalid.
Notice of Dissolution (Sec. 43): Since firm is at will, Q's written notice dated 1st July 2023 is valid. The firm stands dissolved on 1st August 2023, regardless of R's or S's objection. Court proceedings do not suspend the statutory right of a partner to dissolve at will.
Misconduct (Sec. 44(d)): S diverted firm's funds — serious misconduct. Court may dissolve the firm on this ground. However, since valid notice under Sec. 43 already fixed dissolution on 1st August, the Court's order may simply confirm the dissolution earlier or support the winding up process.
Creditor's claim: Creditors cannot directly dissolve a firm under the Act, but Court may consider their petition and order dissolution under just and equitable grounds (Sec. 44(g)), especially where default in repayment exists.

Conclusion
Dissolution by mutual agreement invalid, as unanimity is required.
Q's notice under Sec. 43 is valid → firm stands dissolved on 1st August 2023.
Misconduct by S gives additional ground for Court-ordered dissolution, reinforcing dissolution.
Creditors' claim cannot itself dissolve the firm but strengthens Court's grounds under Sec. 44(g).
Thus, the firm is legally dissolved effective 1st August 2023, based on Q's notice, with Court's intervention further supporting dissolution and creditor protection.

Q60) M/s XYZ & Co., a partnership firm in the business of garment exports, consisted of four partners: A, B, C and D. Additionally, E (a minor) was admitted to the benefits of partnership. The partnership deed was silent on the power of expulsion.
Events:
On 1st January 2024, A, B, and C passed a resolution to expel D, alleging that he was "not cooperating." No notice or opportunity of hearing was given to D.
On 15th February 2024, B retired from the firm without giving any prior notice, though the partnership was at will. The firm continued business under A and C, without settling B's accounts.
On 31st March 2024, E, the minor partner, attained majority. He did not give any public notice of his decision within six months.
By June 2024, disputes arose. D claimed reinstatement, B claimed share of profits after retirement, and creditors of the firm proceeded against E for firm's debts.
Question: With reference to the provisions of the Indian Partnership Act, 1932, decide:
(i) Whether D's expulsion is valid?
(ii) Whether B's retirement without notice is effective? What rights does B have?

(iii) What is the liability of E after attaining majority? (6M)

Answer
(i) Expulsion of D (Sec. 33):
Expulsion valid only if:
Power of expulsion exists in contract,
Exercised by majority,
Exercised in good faith with notice and hearing.
Here, deed was silent on expulsion, and no hearing was given.
Hence, D's expulsion is invalid; he remains a partner.
(ii) Retirement of B (Sec. 32):
In a partnership at will, a partner may retire by giving notice in writing to all partners.
B gave no notice, so his retirement is not valid in law.
Even if treated as retired by conduct, since accounts not settled, under Sec. 37 he can claim either:
Share of profits attributable to use of his property, OR
Interest @ 6% on his share till settlement.
Hence, B is entitled to compensation but cannot claim he retired lawfully without notice.
(iii) Liability of E (Minor admitted to benefits – Sec. 30):
A minor admitted to benefits must elect within 6 months of attaining majority whether he will become a partner, by giving public notice.
If no notice is given → he is deemed to have become a partner after expiry of 6 months.
Here, E attained majority on 31st March 2024 but gave no notice → by September 2024, he is deemed a partner.
As a result, his liability for firm's debts becomes personal, unlimited, and retrospective from the date of his original admission to benefits.
Conclusion
D's expulsion invalid; he remains a partner.
B's retirement ineffective without notice; he may only claim profits/interest under Sec. 37 until accounts settled.
E becomes a full partner by default after 6 months, with retrospective unlimited liability.

Q61) ABC & Co. is a renowned partnership firm doing business in textile industry from last twenty years. But due to technical up-gradation, firm incurred heavy debts of ` 50 lakhs. To maintain the integrity of the firm they introduced Mr. D, as a new partner. Before admission of D, other partners A, B, and C decided on their own and made an agreement with the creditors that the new partner will be liable for existing debt through novation. When D joins, he came to know about the debt of ` 50 lakhs. With reference to the provisions of the Indian Partnership Act, 1932, give your opinion:
(i) Whether D would be liable for the debts of the firm incurred prior to his admission by virtue of the agreement between A, B, C and the creditors?
(ii) Whether your answer will be different if D was minor at the time of admission?
(iii) Whether D would be liable to pay the debt upon becoming major?
(7 Marks)

Answer
Liability of D: As per section 31 of the Indian Partnership Act, 1932, the liabilities of the new partner ordinarily commence from the date when he is admitted as a partner, unless he agrees to be liable for obligations incurred by the firm prior to the date. The new firm, including the new partner who joins it, may agree to assume liability for the existing debts of the old firm, and creditors may agree to accept the new firm as their debtor and discharge

the old partners. The creditor's consent is necessary in every case to make the transaction operative. The mere agreement amongst partners cannot operate as Novation. Thus, an agreement between the partners and the incoming partner that he shall be liable for existing debts will not ipso facto give creditors of the firm any right against him.
In the instant case, D would not be liable for the debts of the firm incurred prior to his admission by virtue of the agreement between A, B, C and the creditors.

(ii) If D was minor at the time of admission: As per section 30, the liability of the minor is confined only to the extent of his share in the profits and the property of the firm.
Minor has no personal liability for the debts of the firm incurred during his minority.
Moreover, a mere agreement amongst partners cannot operate as Novation. Thus, an agreement between the partners and the incoming partner that he shall be liable for existing debts will not ipso facto give creditors of the firm any right against him.

Hence, D would not be liable in this case also.

(iii) Liability of D upon becoming major: A minor partner on attaining majority becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.
Moreover, a mere agreement amongst partners cannot operate as Novation. Thus, an agreement between the partners and the incoming partner that he shall be liable for existing debts will not ipso facto give creditors of the firm any right against him.
Hence, D would not be liable to pay the existing debt upon becoming major.

Q.62 M/S XYZ & Associates, a partnership firm with X, Y, Z as senior partners were engaged in the business of carpet manufacturing and exporting to foreign countries. On 25^{lh} Aug. 2016, they inducted Mr. G an expert in the field of carpet manufacturing as their partner. On 10th Jan. 2018, Mr. G was blamed for unauthorized activities and thus expelled from the partnership by united approval of rest of the partners.
(i) Examine whether action by the partners was justified or not?
(ii) What should have the factors to be kept in mind prior expelling a partner from the firm by other partners according to the provisions of the Indian Partnership Act, 1932?
(6 marks)
Answer:
Legal Provisions

A partner may not be expelled from a firm by a majority of partners except in exercise, in good faith of powers conferred by contract between the partners. It is, thus, essential that:
(i) the power of expulsion must have existed in a contract between the partners.
(ii) the power has been exercised by a majority of the partners, and
(iii) it has been exercised in good faith.
If all these conditions are not present the expulsion is not deemed to be done in bonafide interest of the business of the firm.
Analysis and Conclusion

If a partner is otherwise expelled, the expulsion is null and void.
Thus, action taken by partner in expelling partner G is valid.

Q63) A, B and C are partners in an unregistered partnership firm named M/s ABC & Associates. Is the suit maintainable in the following cases as per the provisions of the Indian Partnership Act, 1932? Give justification also.

(i) A filed a suit against B who had stolen the goods of the firm.

(ii) A filed a suit against M/s ABC & Associates for claiming shares of the assets on its dissolution.

(iii) M filed a suit against the firm M/s ABC & Associates for the recovery of ` 10,000/- dues from the firm. M also owed ` 4,000/-to the firm. The firm claimed a set off of ` 4,000/-. (6 Marks)

Answer

(i) A filed a suit against B who had stolen the goods of the firm:

The said suit by A is Maintainable.

Justification: According to Section 69(1) of the Indian Partnership Act, 1932, a partner of an unregistered firm cannot file a suit in any court against the firm or any partner to enforce a right arising from a contract, unless the firm is registered. Section 69 only bars civil suits to enforce contractual rights. It does not prevent criminal action. But, in this case, A had filed a suit against B for stealing the goods of the firm which is a criminal offense.

Hence, the suit filed against B for the theft of the goods of the firm is maintainable.

(ii) A filed a suit against M/s. ABC & Associates for claiming share of the assets on its dissolution

The said suit by A is Maintainable.

Justification: According to Section 69(3) of the Indian Partnership Act, 1932, a partner of an unregistered firm is precluded from bringing legal action against the firm. But such a person may sue for realization of his share in the firm's property where the firm is dissolved. Here, A's claim is valid as the shares are the assets of the dissolved firm and A can claim it even if the firm is unregistered.

(iii) M filed a suit against the firm for recovery of `10,000/- dues. M also owed `4,000/-. The firm claimed a set-off.

The said suit by M is Maintainable

Justification: According to Section 69(2) of the Indian Partnership Act, 1932, in case of an unregistered firm, an action can be brought against the firm by a third party. If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set-off, if the suit be valued for more than ` 100 or pursue other proceedings to enforce the rights arising from any contract.

Here, M filed a suit against the firm for the recovery of `10,000 dues from the firm. M also owed `4,000/- to the firm.

The firm cannot set-off the claim of `4,000/- as it is more than `100/. – Nevertheless, M is entitled for recovery of ` 10,000 from firm.

Q64) M/s M&M Associates was registered in 1985 by its three partners namely Mr. X, Mr. Y and Mr. Z as the partnership at will. On 5th January 2022, Mr. X, being a very senior partner of age 75 years decided to retire and transfer his shares in the firm to

his grandson Mr. S, who was 17 years old at the time of the transfer. Mr. Y and Mr. Z were not interested but when they came to know that Mr. S is a minor, they agreed to admit Mr. S as partner.

On 5th October, 2023 at the time of inspection of books and accounts, Mr. S noticed that the books of accounts were displaying only a small amount as profit despite a huge turnover. When, he asked other partners about this fact, then Mr. Y told him that one of the major clients, Mr. T refused to pay huge amount of fees. Mr. S decided to sue Mr. T for recovery of fees and sent a notice for the same. Mr. T argued that Mr. S cannot sue him because he has not given notice of remaining a partner on attaining majority.

With reference to provisions of the Indian Partnership Act, 1932 decide:

(i) Whether Mr. X can retire and introduce Mr. S (minor) as a partner?

(ii) Whether Mr. S has right to inspect books of accounts?

(iii) Whether Mr. S has authority to sue Mr. T, on non-payment of fees?

(7 Marks)

Answer

(a) (i) As per the provisions of Section 32 of the Indian Partnership Act, 1932, (the Act) a partner may retire:

(a) with the consent of all the other partners;

(b) in accordance with an express agreement by the partners; or

(c) where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.

However, a minor cannot be admitted as a partner in a firm. A minor can only be admitted to the benefits of partnership with the consent of all partners.

As the partnership is at will, Mr. X can retire from the firm by giving notice in writing to all the other partners of his intention to retire and Mr. S, being a minor, can only be admitted to the benefits of partnership under Section 30 of the Act with the consent of all the existing partners.

(ii) Within 6 months of his attaining majority or on his obtaining knowledge that he had been admitted to the benefits of the partnership, whichever is later, the minor partner has to decide whether he shall remain as a partner or leave the firm.

If he has elected not to become a partner, he may give a public notice in this regard and failure to do so, he shall become a partner in the firm after the expiry of the said 6 months.

As Mr. S failed to give the public notice whether he elected to become or not to become a partner of the firm, after expiry of 6 months from obtaining the majority, he will become the partner of the firm.

As per Section 12(d) of the Indian Partnership Act, 1932, every partner has the right to access and to inspect and to copy any of the books of the firm.

Therefore, Mr. S, in the given case, in the capacity of the being a partner by 5th of October, 2023, have right to inspect the books of accounts. The right, must, however, be exercise Bonafide.

(iii) According to Section 69 of the Act, the firm or any other person on its behalf cannot bring an action against a third party for breach of contract entered into by the firm, unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm.
In other words, a registered firm can only file a suit against a third party and the persons suing have been in the register of firms as partners in the firm.
In view of the above provisions of law, since Mr. S is now a member of the Registered Firm, he has the authority to sue Mr. T for non-payment of fees.
In view of the above provisions of law, since Mr. S is now a member of the Registered Firm, he has the authority to sue Mr. T for non-payment of fees.

(iii) ALTERNATE ANSWER:
Within 6 months of attaining majority or on obtaining knowledge that a minor partner had been admitted to the benefits of partnership, whichever date is later, the minor partner has to decide whether he shall remain a partner or leave the firm.
Where he has elected not to become partner, he may give public notice that he has elected not to become partner, and such notice shall determine his position with regard to the firm.
If he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months.

As Mr. S became major on 5th January 2023 and after six months i.e. 5th July 2023, he shall become a partner in the firm as he has not given notice of not becoming a partner.
Therefore, Mr. S has authority to sue Mr. T on non-payment of fee as no notice is required for remaining as a partner on attaining majority.

CHAPTER - THE LIMITED LIABILITY PARTNERSHIP ACT, 2008

Q65) Referring to the provisions of the Limited Liability Partnership Act, 2008, answer the following:
(i) Under what circumstances a Limited Liability Partnership is compulsorily required to change its name? Also, explain the compliance requirement following the change of name and the consequences, if any, in case of default therein. (4 Marks)
(ii) What do you mean by a Small Limited Liability Partnership? (2 Marks)

Answer

(i) **Change of name of LLP (Section 17 of Limited Liability Partnership Act, 2008):**
(1) Notwithstanding anything contained in sections 15 and 16, if through inadvertence or otherwise, a LLP, on its first registration or on its registration by a new body corporate, its registered name, is registered by a name which is identical with or too nearly resembles to —
(a) that of any other LLP or a company; or
(b) a registered trade mark of a proprietor under the Trade Marks Act, 1999, as is likely to be mistaken for it, then on an application of such LLP or proprietor referred to in clauses (a) and (b) respectively or a company, the Central Government may direct that such LLP to change its name or new name within a period of 3 months from the date of issue of such direction.
(2) Where a LLP changes its name or obtains a new name under subsection (1), it shall within a period of 15 days from the date of such change, give notice of the change to Registrar along with the order of the Central Government, who shall carry out necessary changes in the certificate of incorporation and within 30 days of such change in the certificate of incorporation, such LLP shall change its name in the LLP agreement.
(4) If the LLP is in default in complying with any direction given under sub-section(1), the Central Government shall allot a new name to the LLP in such manner as may be prescribed and the Registrar shall enter the new name in the register of LLP in place of the old name and issue a fresh certificate of incorporation with new name, which the LLP shall use thereafter.
Nothing contained in this sub-section shall prevent a LLP from subsequently changing its name in accordance with the provisions of section 16
(ii) Small Limited Liability Partnership [Section 2(1)(ta) of the Limited Liability Partnership Act, 2008]: It means a limited liability partnership—
(i) the contribution of which, does not exceed twenty-five lakh rupees or such higher amount, not exceeding five crore rupees, as may be prescribed; and

(ii) the turnover of which, as per the Statement of Accounts and Solvency for the immediately preceding financial year, does not exceed forty lakh rupees or such higher amount, not exceeding fifty crore rupees, as may be prescribed; or

(iv) which meets such other requirements as may be prescribed, and fulfils such terms and conditions as may be prescribed.

Q66) Dyana and Bharti, newly qualified chartered accountants, wish to form a Limited Liability Partnership (LLP) to provide their professional services. They seek information about the provisions of the Limited Liability Partnership Act, 2008, specifically regarding the incorporation document. Additionally, they want to know whether the statement filed along with the incorporation document serves as sufficient evidence that all legal requirements for the incorporation of the LLP have been fulfilled. Explain these aspects to them. (6 Marks)

Answer

Incorporation document (Section 11 of the Limited Liability Partnership Act, 2008):
The most important document needed for registration is the incorporation document.

(1) For a LLP to be incorporated:

(a) two or more persons associated for carrying on a lawful business with a view to profit shall subscribe their names to an incorporation document;

(b) the incorporation document shall be filed in such manner and with such fees, as may be prescribed with the Registrar of the State in which the registered office of the LLP is to be situated; and

(c) Statement to be filed:

- there shall be filed along with the incorporation document, a statement in the prescribed form, made by either an advocate, or a Company Secretary or a Chartered Accountant or a Cost Accountant, who is engaged in the formation of the LLP and
- by any one who subscribed his name to the incorporation document,
- that all the requirements of this Act and the rules made thereunder have been\ complied with,
- in respect of incorporation and matters precedent and incidental thereto.

(2) The incorporation document shall—

(a) be in a form as may be prescribed;
(b) state the name of the LLP;
(c) state the proposed business of the LLP;
(d) state the address of the registered office of the LLP;
(e) state the name and address of each of the persons who are to be partners of the LLP on incorporation;
(f) state the name and address of the persons who are to be designated partners of the LLP on incorporation;
(g) contain such other information concerning the proposed LLP as may be prescribed.

(3) If a person makes a statement as discussed above which he—

(a) knows to be false; or
(b) does not believe to be true, shall be punishable

- with imprisonment for a term which may extend to 2 years and
- with fine which shall not be less than ` 10,000 but which may extend to ` 5 Lakhs.

Incorporation by registration (Section 12- Sufficient evidence): As per section 12, the Registrar may accept the statement delivered under clause (c) of sub-section (1) of section 11 as sufficient evidence that the requirement imposed by clause (a) of the sub-section has been complied with.

In view of above, the statement filed along with the incorporation document serves as sufficient evidence that all legal requirements for the incorporation of the LLP have been fulfilled.

CHAPTER THE COMPANIES ACT, 2013

Q67) XYZ is a company incorporated under the Companies Act, 2013.
The paid up share capital of the company is held by others as on 31.03.2024 in as under:
(1) Government of India 20%
(2) Life Insurance Corporation of India (Public Institution) 8%
(3) Government of Tamil Nadu 10%
(4) Government of Rajasthan 10%
(5) ABC Limited (owned by Government Company) 15%
As per above shareholding, state whether XYZ limited be called a Government Company under the
provisions of the Companies Act, 2013. (4 Marks)
What will be your Answer if ABC Limited (owned by Government Company) hold 50.90% Holding? (2 Marks)

Answer
Under the Companies Act, 2013, a Government company is defined in Section 2(45) as a company in which not
less than 51% of the paid-up share capital is held by:
- The Central Government, or
- Any State Government or Governments, or
- Partly by the Central Government and partly by one or more State Governments,

And includes a company which is a subsidiary company of such a Government company.
In the instant case, total Government Shareholding is 40% [i.e. 20% (Government of India) + 10%
(Government of Tamil Nadu) + 10% (Government of Rajasthan)] = 40%

The holding of the Life Insurance Corporation of India i.e. 8% and ABC Limited i.e. 15%, total amounting to 23%
cannot be taken into account while counting the prescribed limit of 51%.
Since the total shareholding held by the Central Government and State Governments combined is 40%, which is
less than 51%, XYZ Limited does not qualify to be a Government company under the provisions of the
Companies Act, 2013.

B) Yes - Gov Company - Subsidiary of Gov Co

Q68) Justice Private Limited has 9 directors on its Board of Directors. The company's Articles of Association currently state that the quorum for board meetings shall be 1/3rd of the total strength or 2 directors, whichever is higher. The company now intends to amend this article to specify that the quorum for board meetings shall be 1/3rd of the total strength or 4 directors, whichever is higher. Advise the company on the procedure for including this entrenchment provision in its Articles, in accordance with the provisions of the Companies Act, 2013. Would your advice differ if the company were a public company? (3 Marks)

Answer
Section 5(4) and (5) of the Companies Act, 2013 contains the following provisions:
Manner of inclusion of the entrenchment provision: The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articlesagreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.
Notice to the registrar of the entrenchment provision: Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.
In the instant case, Justice Private Limited can follow the above procedure i.e. with the consent of all the members and notice to the registrar to includethe entrenchment provisionin its Articles.
Yes, the advice will differ, if the company is public company,since it has to pass SpecialResolution and also inform to the registrar.

Q69 A company registered under Section 8 of the Companies Act, 2013, earned huge profits during the financial year ended on 31st March, 2018 due to some favourable policies declared by the Government of India and implemented by the company. Considering the development, some members of the company wanted the company to distribute dividends to the members of the company. They approached you to advise them about the maximum amount of dividend that can be declared by the company as per the provisions of the Companies Act, 2013. Examine the relevant provisions of the Companies Act, 2013 and advise the members accordingly. (4 marks)
Answer:
Legal Provisions

According to the facts of this case there exists a situation in which certain members of a **Section 8** company have approached a person for seeking relevant and informed advice on the amount of dividend that can be distributed amongst them from the pool of profits made over a financial year by a company registered under **Section 8.**

Analysis

The first and foremost thing in this case that such members need to be educated about is the definition and objects of a **Section 8** company which clearly states that " a **Section 8** company is formed to promote the charitable object of commerce, art, science, sports education, research, social welfare, religion, charity, protection of environment, etc., and a **Section 8** company intends to apply its profit in - (1) promoting its objects (2) - prohibiting the payment of any dividend to its members.

Conclusion

Now when it is clearly evident that a **Section 8** company is not statutorily bound to pay dividends to its members unlike a public or private company then automatically the demand of the members for dividend stands invalid and cannot be enforced on the company.

Q.70 Sound Syndicate ltd. a public company, its articles of association empowers the managing agents to borrow both short and long term loans on behalf of the company, Mr. Liddle, the director of the company, approached Easy Finance Ltd. a non banking finance company for a loan ₹ 25,00,000 in name of the company. The Lender agreed and provided the above said loan. Later on Sound Syndicate Ltd. refused to repay the money borrowed on the pretext that no resolution authorizing such loan have been actually passed by the company and the lender should have enquired about the same prior providing such loan hence company not liable to pay such loan.
Analyse the above situation in terms of the provisions of Doctrine of Indoor Management under the Companies Act, 2013 and examine whether the contention of Sound Syndicate Ltd. is correct or not?
(4 marks)

Answer:

Legal Provisions

As per the doctrine of Indoor Management, outsiders are entitled to assume that all the detailed formalities for doing an act authorised by the articles, have been observed. Outsider, is not at all required to inquire into the internal affair of the company. In case of **The Royal British Bank Vs. Turquand**, this doctrine was clearly explained. **The bond signed by the director and secretary on behalf of the company, was held to be valid and bank was not required to inquire whether any ordinary resolution was passed or not**. This is the Indoor Management rule, that the company's indoor affair are company's problem.

Analysis

In the given case, the articles of the company, authorise the director to borrow on behalf of the company. Mr. Liddle a director borrowed money but, later on company denied its liability to repay on the pretext that no resolution was so passed and lender should have enquired

about the same prior to providing the loan.

Conclusion

Held, the contention of Sound Syndicate Ltd. is not correct, as the outsider is not obligated to enquire into the internal affair of the company.

Q.71 Popular Products Ltd. is company incorporated in India, having a total Share Capital of ₹ 20 Crores. The Share capital comprises of 12 Lakh equity shares of ₹ 100 each and 8 Lakhs Preference Shares of ₹ 100 each. Delight Products Ltd. And Happy products Ltd. hold 2,50,000 and 3,50,000 shares respectively in Popular Products ltd. Another company Cheerful products ltd. holds 2,50,000 shares in Popular Products Ltd. Jovial Ltd. is the holding company for all above three companies namely Delight Products Ltd; Happy products ltd; Cheerful products ltd. Can Jovial Ltd., be termed as subsidiary company of Popular Products Ltd., if it Controls composition of directors of Popular Products Ltd. State the related provision in the favour of your answer.
(3 marks)

Answer:

Legal Provisions

Holding and Subsidiary companies are relative terms. A subsidiary company in relation to any other company means a company in which the holding company -

(i) Controls the composition of the Board of Director; or

(ii) Exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies.

Analysis and Conclusion

In the given case Jovial Ltd. is controlling the composition of the Board of Director of Popular Products Ltd. and hence it can be called as Holding Co. of Popular Products Ltd. and Popular Products Ltd., its subsidiary.

Q.72) A, an assesses, had large income in the form of dividend and interest. In order to reduce his tax liability, he formed four private limited company and transferred his investments to them in exchange of their shares. The income earned by the companies was taken back by him as pretended loan. Can A be regarded as separate from the private limited company he formed?
(3 marks)

Answer:

Legal Provisions

The facts of the given case are similar to that of "**Dinshaw Maneckjee Petit**", it was held that the company was not a genuine company at all but merely the assessee himself disguised under the legal entity of a limited company. The assessee earned huge income by way of dividends and interest. So he opened some companies and purchased their shares in exchange of his income by way of dividend and interest. This income was transferred back to assessee by way of loan. The Court decided that the private companies were a share and

the corporate veil was lifted to decide the real owner of the income.

Conclusion

Thus, A cannot be regarded as separate from the private limited company he formed.

Q.73 ABC Limited was registered as a public company. There were 245 members in the company. Their details are as follows:

Directors and their relatives	**190**
Employees	**15**
Ex-employees (shares were allotted when they were employees)	**20**
Others (Including 10 joint holders holding shares jointly in the name of father and son)	**20**

The Board of directors of the company propose to convert it into a private company. Advice whether reduction in the number of members is necessary for conversion. (4 marks)

Answer:

Legal Provisions

According to **Section 2(68) of the Companies Act, 2013**, "Private company" means a company having a minimum paid-up share capital as may be prescribed, and which by its articles, except in case of One Person Company, limits the number of its members to two hundred.

However, where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member.

It is further provided that -

(A) Persons who are in the employment of the company; and

(B) Persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased,

Shall not be included in the number of members.

Analysis and Conclusion

In the instant case, Total No. of Members of ABC Ltd. will be counted as follow:

1. Directors & their relatives - **190**

2. Others (10 Couple) (10x1) - **10**

200

Since No. of member do not exceed 200. Therefore, there is no need for reduction in the number of members.

Q.74 SK Infrastructure Limited has a paid-up share capital divided into 6,00,000 equity shares of INR 100 each, 2,00,000 equity shares of the company are held by Central Government and 1,20,000 equity shares are held by Government of Maharashtra. Explain with reference to relevant provisions of the Companies Act, 2013, whether SK

Infrastructure Limited can be treated as Government Company.
(3 marks)

Answer:

Legal Provisions

As per **Section 2(45) of Companies Act, 2013** Government company means any company in which not less than 51% of the paid-up share capital is held by-

(i) the Central Government, or

(ii) by any State Government or Governments, or

(iii) partly by the Central Government and partly by one or more State Governments, and the Section includes a company which is a subsidiary company of such a Government company.

Analysis

Here in the given problem out of 6 Lac equity shares of SK Infrastructure Ltd. 3,20,000 (2,00,000 +1,20,000) shares are with the Central Govt, and Govt, of Maharashtra which is more than 51 % of the paid up share capital of SK Infrastructure Ltd.

Conclusion

Applying the above legal provision we can say, SK Infrastructure Ltd. is a Government Company.

Q.75 BC Private Limited and its subsidiary KL Private Limited are holding 90,000 and 70,000 shares respectively in PQ Private Limited. The paid-up share capital of PQ Private Limited is ₹ 30 Lakhs (3 Lakhs equity shares of ₹ 10 each fully paid).
Analyse with reference to provisions of the Companies Act, 2013 whether PQ Private Limited is a subsidiary of BC Private Limited. What would be your answer if KL Private Limited is holding 1,60,000 shares in PQ Private Limited and no shares are held by BC Private Limited in PQ Private Limited? (3 marks)

Answer:

Legal Provisions

Holding and subsidiary companies are relative terms. A subsidiary company in relation to any other company means a company in which the holding company-

(i) Controls the composition of the board of director, or

(ii) Exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies.

Analysis and Conclusion

In the given case BC Ltd. is controlling the composition of the board of director of PQ Ltd. and KL Pvt. Ltd. and hence it can be called as holding company.
If KL Pvt. Ltd. holds 160,000 shares in PQ Ltd. no shares are held by BC Pvt. Ltd. then KL Pvt. Ltd. will be the holding company of PQ Pvt. Ltd. and PQ Pvt. Ltd. will be subsidiary company of KL Pvt. Ltd.

Q.76 The Articles of Association of Aarna Limited empowers its managing agents to borrow loans on behalf of the company. Ms. Anika, the director of the company,

borrowed ₹ 18 Lakhs in name of the company from Quick Finance Limited , a non - banking finance company.
Later on, Aarna Limited refused to repay the money borrowed on the pretext that no resolution authorizing such loan have been actually passed by the company and therefore the company is not liable to pay such loan.
Decide whether the contention of Aarna Limited is correct in accordance with the provisions of the Companies Act, 2013? (4 marks)

Answer:

Legal Provisions

According to the doctrine of Indoor management:

(a) Outsider are safely entitled to assume that everything has been done properly, as far as the internal compliance and procedures by the company are concerned.

(b) In other words, we can say that this doctrine says that everything that was required to be done by the company, will be assumed by the outsiders to have been done properly. This doctrine aims to protect the outsider against the company.

Analysis and Conclusion

In the above case, Quick Finance Ltd. which is an outsider, hence, it need not enquire whether the necessary resolution was passed properly or not by the company. Even if no resolution was actually passed for authorizing the loan, company would be held liable to repay the loan. In the light of above, we can say that contention of Aarna Ltd, is not correct.

Q.77 Mr. R, a manufacturer of toys approached MNO Private Limited for supply of raw material worth ₹ 1,50,000/-. Mr. R was offered a credit period of one month. Mr. R went to the company prior to the due date and met Mr. C, an employee at the billing counter, who convinced the former that the payment can be made to him as the billing-cashier is on leave. Mr. R paid the money and was issued a signed and sealed receipt by Mr. C. After the lapse of due date, Mr. R received a recovery notice from the company for the payment of ₹ 1,50,000/-.Mr. R informed the company that he has already paid the above amount and being an outsider had genuine reasons to trust Mr. C who claimed to be an employee and had issued him a receipt. The Company filed a suit against Mr. R for non-payment of dues. Discuss the fate of the suit and the liability of Mr. R towards company as on current date in consonance with the provision of The Companies Act 2013? Would your answer be different if a receipt under the company seal was not issued by Mr. C after receiving payment? (4 marks)

Answer:

Legal Provisions

Doctrine of Indoor Management: The Doctrine of Indoor Management is the exception to the doctrine of constructive notice. The doctrine of constructive notice does not mean that outsiders are deemed to have notice of the internal affairs of the company for instance, if an act is authorised by the articles or memorandum, an outsider is entitled to assume that all the detailed formalities for doing that act have been observed.
The Doctrine of Indoor Management is important to persons dealing with a company through its directors or other persons. They are entitled to assume that the acts of the directors or

other officers of the company are validly performed, if they are within the scope of their apparent authority. So long as an act is valid under the articles, if done in a particular manner, an outsider dealing with the company is entitled to assume that it has been done in the manner required.

Analysis and Conclusion

In the given question, Mr. R has made payment to Mr. C and he (Mr. C) gave the receipt of the same to Mr. R.
Thus, it will be rightful on part of Mr. R to assume that Mr. C was also authorised to receive money on behalf of the company.
Hence, Mr. R will be free from liability for payment of goods purchased from MNO Private Limited, as he has paid amount due to an employee of the company.
It is affirmed means the answer would be different if a receipt under the company seal was not issued by Mr. C after receiving payment.
In this situation the company will be held liable and Mr. C can not escape from the liability.

Q.78 Mike LLC incorporated in Singapore having an office in Pune, India. Analyse whether Mike LLC would be called as a foreign company as per the provisions of The Companies Act, 2013? Also explain the meaning of foreign company.
(3 marks)
Answer:
Legal Provisions

Meaning of the foreign company:
According to **Section 2(42) of Companies Act, 2013** foreign company means any company or body corporate incorporated outside India which:
(i) Has a place of business in India whether by itself or through an agent, physically or through electronic mode, and
(ii) Conducts any business activity India having in any other manner.

Analysis and Conclusion

In the present case Mike LLC is incorporated in Singapore and is having its control and management from Pune, India, hence, Mike LLC would be called as a foreign company as per the provisions of the Companies Act, 2013.

Q.79 ABC Private Limited is a registered company under the Companies Act, 2013 with paid up capital of ₹ 35 lakhs and turnover of ₹ 2.5 crores. Whether the ABC Private Limited can avail the status of a Small Company in accordance with the provisions of the Companies Act, 2013₹.Also discuss the meaning of a Small Company.
(3 marks)
Answer:
Legal Provisions

As per Section 2(85) of Companies Act, 2013 small company means a company, other than a public company:

(i) Paid up share capital of which does not exceed four crore rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and
(ii) Turnover of which as per profit and loss account for the immediately preceding financial year does not exceed forty crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees.

Analysis and Conclusion

In the above case ABC Pvt. has a paid up share capital of ₹ 35 lakhs and a turnover of ₹ 2.5 crores. In the right of above mentioned provisions, ABC Pvt. Ltd. can avail the states of small company as its paid up share capital is less than the prescribed amount of ₹ 4 crores and turnover is also less than the prescribed limit of ₹ 40 crores.

Q.80) The State Government of X, a state in the country is holding 48 lakh shares of Y Limited. The paid-up capital of Y Limited is ₹ 9.5 crore (95 lakh shares of ₹ 10 each). Y Limited directly holds 2,50,600 shares of Z Private Limited which is having share capital of ₹ 5 crore in the form of 5 lakh shares of ₹ 100 each. Z Private Limited claimed the status of a subsidiary company of ₹ 100 each. Z Private Limited claimed the status of a subsidiary company of Y Limited as well as a Government company. Advise as a legal advisor, whether Z Private Limited is a subsidiary company of Y Limited as well as a Government company under the provisions of the Companies Act, 2013?
(4 Marks)
Answer:
Legal Provisions

According to **Section 2(45) of the Companies Act, 2013**, Government Company means any company in which not less than 51% of the paid-up share capital is held by-

(i) the Central Government, or
(ii) by any State Government or Governments, or
(iii) partly by the Central Government and partly by one or more State Governments, and the section includes a company which is a subsidiary company of such a Government company.

As per **Section 2(87) of the Companies Act, 2013**, "subsidiary company" in relation to any other company (that is to say the holding company), means a company in which the holding company –

(i) controls the composition of the Board of Directors; or
(ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies.

Analysis

In the instant case, the State Government of X, a state in the country is holding 48 Lakh shares in Y Limited which is below 51% of the paid-up share capital of Y Limited i.e. 48.45 Lakh shares (51% of 95 Lakh shares). Hence Y Limited is not a Government Company.
Further, Y Limited directly holds 2,50,600 shares in Z Private Limited, which is more than one-half of the total shares of Z Limited i.e. 2,50,000 shares (50% of 5 Lakh shares). Thus, the Company controls more than one-half of the total voting power of Z Limited. Hence Z

Private Limited is a subsidiary of Y Limited.

Conclusion

Therefore, we can conclude that Z Private Limited is a subsidiary of Y Limited but not a Government Company since Y Limited is not a Government Company.

Q.81 MTK Private Limited is a company registered under the Companies Act, 2013 on 5th January, 2021. The company has not started its business till now. On 7th April, 2023, a notice has been received from ROC for non-filing of FORM No-INC-20A. Identify under which category MTK Private Limited company is classified. Explain the definition of the category of the company in detail. (3 Marks)

Answer:

Legal Provisions

"Inactive company" means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years. **[Explanation (i) to Section 455 of the Companies Act, 2013]**

"Significant accounting transaction" means any transaction other than -

(a) payment of fees by a company to the Registrar;
(b) payments made by it to fulfil the requirements of this Act or any other law
(c) allotment of shares to fulfil the requirements of this Act; and

payments for maintenance of its office and records. **[Explanation (ii) to Section 455 of the Companies Act, 2013]**

Analysis

In the instant case, MTK Private Limited was registered on 5th January, 2021 and has not started its business till now. On 7th April, 2023, a notice has been received from ROC for non-filing of Form No. INC-20A.

Conclusion

Since the Company has not started its business and a period of more than two years have already elapsed, it will be treated as an inactive company.

Q.82 A company, ABC limited as on 31.03.2023 had a paid-up capital of ` 1 lakh (10,000 equity shares of ` 10 each). In June 2023, ABC limited had issued additional 10,000 equity shares of ` 10 each which was fully subscribed. Out of 10,000 shares, 5,000 of these shares were issued to XYZ private limited company. XYZ is a holding company of PQR private limited by having control over the composition of its board of directors. Now, PQR private limited claims the status of being a subsidiary of ABC limited as being a subsidiary of its subsidiary i.e. XYZ private limited. Examine the validity of the claim of PQR private limited. State the relationship if any, between ABC limited & XYZ private limited as per the provisions of the Companies Act, 2013. (7 Marks)

Answer:

Legal provisions:

As per Section 2(46) of the Companies Act, 2013, holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies. Section 2(87) defines "subsidiary company" in relation to any other company (that is to say the holding company), means a company in which the holding company

(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies.

As per section 2(6) of the Act, Associate Company in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company. The expression "significant influence" means control of at least twenty per cent of total voting power, or control of or participation in business decisions under an agreement.

Analysis

In the instant case, as on 31.03.2023, ABC Limited had a paid-up capital of ` 1 lakh (10,000 equity shares of ` 10 each). In June 2023, ABC Limited issued additional 10,000 equity shares, which was fully subscribed. Post issue, the total paid-up capital of ABC Limited is ` 2 lakhs (20,000 equity shares of `10 each). Out of these, 5,000 shares were issued to XYZ Private Limited. Since XYZ Private Limited holds only 25% of the shares in ABC Limited,it does not have control of more than one-half of the total voting power of ABC Limited.

Conclusion

Hence, XYZ Private Limited cannot be considered as a subsidiary company of ABC Limited in terms of the second criteria stated above, that of controlling of voting power. XYZ Private Limited is the holding company of PQR Private Limited by having control over the composition of its Board of Directors. But since XYZ Private Limited cannot be termed as a subsidiary company of ABC Limited, PQR Private Limited cannot claim the status of being a subsidiary of ABC Limited in terms of the first criteria, that of controlling of the composition of directors.

In terms of the above provision, the relationship between ABC Limited and XYZ Private Limited can be of an Associate Company. Since XYZ Private Limited holds more than 20 percent of voting power in ABC Limited, it can be considered as an Associate Company of ABC Limited.

Q83) JV Limited borrowed a secured loan of ` 5 crore from Star Bank Limited (the bank) to meet its working capital requirement. However, the borrowing powers of the company, under its Memorandum of Association, were restricted to ` 1 crore. The bank released the loan amount in two instalments of ` 1 crore and ` 4 crore. On the due date for repayment of the loan, the company refused to accept the liability of ` 5 crore on the ground that the borrowing was ultra vires the company. The company's books of account show that the company has utilised the loan amount of ` 3 crore for repayment of its lawful debts. The utilisation of the remaining ` 2 crore cannot be traced. Referring to the doctrine of ultra-vires under the Companies Act, 2013,

examine the validity of the decision of the company denying the repayment of the loan and explore the remedy, if any, available to the bank for recovery of the loan. (4 Marks)

Answer:

Legal Provisions

Doctrine of ultra vires: The meaning of the term ultra vires is simply "beyond (their) powers". It is a fundamental rule of Company Law that any act done or a contract made by the company which travels beyond the powers not only of the directors but also of the company is wholly void and inoperative in law and is therefore not binding on the company.

The impact of the doctrine of ultra vires is that a company can neither be sued on an ultra vires transaction, nor can it sue on it. Since the memorandum is a "public document", it is open to public inspection.

Therefore, when one deals with a company one is deemed to know about the powers of the company. If in spite of this you enter into a transaction which is ultra vires the company, you cannot enforce it against the company.

Analysis

In the instant case, borrowing more than ₹1 crore was clearly beyond JV Limited's powers as per its MoA, making the loan transaction ultra vires to the extent of the excess amount over ₹1 crore.

Conclusion

Hence, the decision of the company denying the repayment of the loan being ultra virus the company shall be valid for ` 4 crore. If the funds have been applied for legitimate business purposes (such as repaying lawful debts), the lender steps into the shoes of the debtor paid off and consequently he would be entitled to recover his loan to that extent from the company. Therefore, JV Limited cannot deny repayment of ₹3 crore, as it was utilised for lawful purposes, despite the ultra vires nature of the loan. Ultimately, the company has no remedy available to recover the balance amount of loan of ` 1 crore as the spending thereof is not traceable.

Q84 After incorporation of Goodwill Private Limited (the company) on 15th May, 2024 the share certificates were issued to Amit, Sumit and Sumati being subscribers to the Memorandum of Association of the company without affixing the common seal thereon and under the signature of Amit and Sumit, the directors of the company. The company has yet to appoint a company secretary. On objection raised by Sumati, a director, about the validity of the share certificate signed by other two directors, Amit and Sumit, clarified that since the company has opted not to have the common seal for the company the share certificates (i.e. the document) signed by two directors are valid. Referring to the provisions of the Companies Act, 2013, examine thecorrectness of the objection raised by one of the directors and in response, the clarification offered by other directors.

Would your answer be different, if the company had a company secretary? (3 Marks)

Answer:

Legal Provisions

The documents which need to be authenticated by a common seal will be required to be so done, only if the company opts to have a common seal.

In case a company does not have a common seal, the authorization shall be made by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.

Analysis and Conclusion

In the instant case, the objection of Sumati is not valid as the share certificate was signed by two directors Amit and Sumit as the company secretary was not appointed.
If the company had a company secretary, then the share certificate has to be signed by a director and the Company secretary.
Hence, yes, the answer will be different.

Q85) The extract of the major shareholders holding paid-up share capital in Rural Development Fin. Corp. Ltd., are as follows:

Central Government 26%
State of Maharashtra 18%
State of Tamilnadu 24% and
Public 32%

Whether the company would be considered as a Public Financial Institution (PFI) under the provisions of the Companies Act, 2013? Explain in brief about various institutions regarded as 'Public Financial Institutions' under the Companies Act, 2013. (5 Marks)

Answer

Conditions for an institution to be notified as PFI (Section 2(72) of the Companies Act, 2013:
No institution shall be so notified unless—
(A) it has been established or constituted by or under any Central or State Act other than this Act or the previous Companies Law; or
(B) not less than fifty-one per cent of the paid-up share capital is held or controlled by the Central Government or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments.
In the instant case, the major shareholders holding paid-up share capital in Rural Development Fin. Corp. Ltd. by the Central Government and State Governments is 68% (i.e. Central Government: 26%, State of Maharashtra: 18% and State of Tamilnadu: 24%), hence it will be regarded as 'Public Financial Institution' under the Companies Act, 2013.
By virtue of Section 2(72) of the Companies Act, 2013, the following institutions are to be regarded as public financial institutions:
(i) the Life Insurance Corporation of India, established under the Life Insurance Corporation Act, 1956;
(ii) the Infrastructure Development Finance Company Limited,
(iii) specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002;
(iv) institutions notified by the Central Government under section 4A(2) of the Companies Act, 1956 so repealed under section 465 of this Act;
(iv) such other institution as may be notified by the Central Government in consultation with the Reserve Bank of India.

Q86) The Object clause of Memorandum of Association of ABC Pvt. Ltd. authorized the company to carry on the business of trading in property in Gurgaon. Since the company was not doing well, the Directors of the company in a recent board meeting planned to diversify the business and enter into Construction business. For this purpose, they borrowed a sum of 5 crores from Magnum Finance Ltd. But the members of the company did not approve the decision of the board hence, company

refused to repay the loan. According to provisions of the Companies Act, 2013 what is the recourse available to Magnum Finance Ltd. for recovery of the loan? (4 Marks)

Answer

It is a fundamental rule of Company Law that the objects of a company as stated in its memorandum can be departed from only to the extent permitted by the Act, thus far and no further. In consequence, any act done or a contract made by the company which travels beyond the powers not only of the directors but also of the company is wholly void and inoperative in law and is therefore not binding on the company.
On this account, a company can be restrained from employing its fund for purposes other than those sanctioned by the memorandum. Likewise, it can be restrained from carrying on a trade different from the one it is authorised to carry on.
The impact of the doctrine of ultra vires is that a company can neither be sued on an ultra vires transaction, nor can it sue on it.
Since the memorandum is a "public document", it is open to public inspection. Therefore, when one deals with a company one is deemed to know about the powers of the company. If in spite of this you enter into a transaction which is ultra vires the company, you cannot enforce it against the company.
In the instant case, ABC Pvt. Ltd. was authorised to trade in property only, so taking loan for construction business was ultra virus the power of the company.
Therefore, Magnum Finance Ltd. cannot enforce against ABC Pvt. Ltd. for recovery of the loan. But,

(a) It can recover the money to the extent it has been utilised in meeting lawful debt of the company, then it steps into shoes of the debtor paid off and consequently it would be entitled to recover the loan to that extent from the company.
(b) if the money is not spent, it may stop ABC Pvt. Ltd. from spending by means of injunction and recover the unspent amount.

Q87) SNM Ltd. was registered in 2021 with a share capital of ` 50 Lakh divided into 5 lakhs equity share of ` 10 each under Section 8 of the Companies Act, 2013 for promotion of art in Jaipur. Company earned huge profits during the financial year ending on 31st March 2025 due to boom in the market. On 10th May 2025, 75% members of the company demanded to distribute 10% dividend to the equity shareholders. For this purpose, they passed special resolution in EGM.

With reference to provisions of the Companies Act, 2013 decide whether SNM Ltd. can declare dividend @ 10% to equity shareholders for the year ending 31st March 2025. (3 Marks)

Answer
(ii) Formation of companies with charitable objects etc. (Section 8 company): Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to
- promote the charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc.
- Such company intends to apply its profit in promoting its objects and
- prohibiting the payment of any dividend to its members.

In the instant case, SNM Ltd. cannot declare dividend @10% to equity shareholders for the year ending 31st March, 2025 as it is a Section 8 company which are specifically prohibited

from paying dividend. The profits of a section 8 company must be applied towards promoting its objects. Therefore, the special resolution passed in the EGM to declare a dividend is invalid.

Q88) Mr. RM was engaged in the trading of handloom items with his wife. One of their friends suggested that they should form a private limited company. By corporatizing their business, they could gain better recognition and even explore export opportunities.
They established M/s RM Private Limited with both as the sole members. They got the work orders on job basis from local artisans, sold their products in the Indian market, and exported them as well. The company also secured a line of credit from the bank amounting to ` 30 lakhs.
Tragically, Mr. RM met with an accident and passed away. Now Mrs. RM was the only member in the private limited company. A family friend suggested including her brother as a member, but she declined. Instead, she decided to convert the private limited company into a One Person Company (OPC) and nominate her brother, Mr. AK, who is currently employed in London, UK.
Examine with reference to the Companies Act, 2013:
(i) Whether Mrs. RM's decision to convert the private limited company into a One Person Company (OPC) is legally valid; and
(ii) When Mrs. RM's decision to nominate her brother Mr. AK, as a nominee, is not legally valid? (7 Marks)

Answer

A Private Limited Company can be converted into an OPC if it meets the eligibility criteria under Section 2(62) of the Companies Act, 2013.
An OPC can have only one member and the Memorandum of OPC shall indicate the name of the other person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the Company.
The member of OPC may at any time change the name of such other person by giving notice to the company and the company shall intimate the same to the registrar.
No person shall be eligible to become nominee in more than one OPC.
Further only a natural person who is an Indian citizen whether resident in India or otherwise-
- shall be eligible to incorporate a One Person Company;
- shall be a nominee for the sole member of a One Person Company.

Explanation I - For the purposes of this rule, the term "resident in India" means a person who has stayed in India for a period of not less than one hundred and twenty days during the immediately preceding financial year.
In view of the above, in the given case, Mrs. RM's decision to convert the Company into an OPC is legally valid.

(ii) Nominating Mr. AK may not be valid if he does not meet the residency requirement (i.e., if he has not stayed in India for at least 120 days in the preceding financial year). In that case, Mrs. RM must nominate another Indian resident.

(ii) ALTERNATE ANSWER
Here, Mrs. RM's decision to nominate her brother Mr. AK, as a nominee is not legally valid in the case where he has obtained the foreign citizenship being in employment in London UK.

Note: Since nothing is specified as regards the citizenship of Mr. AK, a benefit of doubt may be given to the students who assumes that Mr. AK has obtained the UK citizenship being therein employment. In that case he may lose the Indian Citizenship and shall be disqualified to be nominated as a nominee.

Q89) XYZ Ltd. was incorporated to hold the patent for a new product. The company is expecting to start its commercial production within the next two years. In the meanwhile, for timely installation, the company has placed the purchase order for plant and machinery with a down payment of ` 1 crore. Referring to the provisions of the Companies Act, 2013 examine, whether the company can go for acquiring the status of a dormant company?

Answer

According to Section 455 of the Companies Act, 2013, where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

In the instant case, XYZ Ltd. has made a significant accounting transaction (down payment of ₹1 crore for plant and machinery), it does not meet the criteria of a dormant company under Section 455 of the Companies Act, 2013.

Therefore, XYZ Ltd. cannot acquire the status of dormant company.

Q90) Q. Xeon Ltd.'s Memorandum of Association authorizes it to borrow up to ₹ 100 Crores for its core business of infrastructure development. The Board of Directors, under its Articles of Association, can borrow up to ₹ 50 Crores without shareholder approval.
The company took the following loans:
Loan A: ₹ 60 Crores from Apex Bank for building a highway. This was approved by a shareholder resolution.
Loan B: ₹ 40 Crores from BizFunds LLP (a private lender) to pay outstanding wages and utility bills. This was approved only by the Board.
Loan C: ₹ 15 Crores from Mr. Sharma (an individual investor) to invest in the stock market, a activity explicitly prohibited by Xeon Ltd.'s MOA. This was also approved by the Board.
Xeon Ltd. utilized the loans as follows:
Loan A (₹60Cr): Fully used for the highway project.
Loan B (₹40Cr): ₹ 35 Crores was used to pay wages and bills. The remaining ₹ 5 Crores was transferred to the personal account of its Managing Director, who has since absconded.
Loan C (₹15Cr): The entire amount was lost in trading losses.
The company is now in financial distress and refuses to repay any of the loans, citing the following reasons:
For Loan A: It claims the shareholder resolution was passed without a proper quorum.
For Loan B: It claims the loan was ultra vires the Board's powers and the funds were misappropriated.
For Loan C: It claims the loan was ultra vires the company's objects.
In light of the doctrines of Ultra Vires and Constructive Notice, and the provisions of the Indian Contract Act, 1872, examine the liability of Xeon Ltd. towards each lender. What remedies are available to the lenders?

(6 Marks)

Answer

1. Liability towards Apex Bank (Loan A - ₹60 Cr):

Liability: YES. The loan is for an intra vires object (infrastructure). The shareholder resolution, even with a quorum defect, is an internal irregularity. Apex Bank is protected by the Doctrine of Indoor Management (Turquand's Rule) and can assume all internal procedures were followed. The company is fully liable to repay ₹60 Cr.

2. Liability towards BizFunds LLP (Loan B - ₹40 Cr):

Liability: PARTIAL. The purpose (paying wages) is intra vires the company. The loan is ultra vires the Board's power but intra vires the company's objects.

For ₹35 Cr (used for wages): The company is liable under the doctrine of restitution; it cannot unjustly enrich itself by using borrowed funds to pay its lawful debts.

For ₹5 Cr (misappropriated): The company is not liable. Since the company itself did not benefit from these funds, BizFunds' remedy is against the Managing Director for fraud, not against the company.

3. Liability towards Mr. Sharma (Loan C - ₹15 Cr):

Liability: NO. The loan is ultra vires the company's objects (expressly prohibited by the MOA). An ultra vires contract is void. The doctrine of indoor management does not apply to acts that are wholly outside the company's objects.

Remedy: Mr. Sharma cannot sue on the contract. His only remedy is to trace his money and seek an injunction if the company still holds it, which it does not. He bears the loss.

CHAPTER - Negotiable Instruments Act 1881

Q.91 A drawer of a cheque after having issued the cheque, informs the drawee not to present the cheque as well as inform the bank to stop the payment. Decide whether it constitutes an offence against the drawer under the Negotiable Instruments Act 1881? (4 marks)

Answer:

As per the **provision of Sec. 139 of the N. I. Act, 1381**, it shall be presumed, unless the contrary is proved that the holder of a cheque received the cheque of the nature referred to in Sec. 138 for the discharge in whole or in part or any debt or other liability.

Once a cheque is issued by the drawer, he is bound by it to discharge and merely because he issued a notice for stoppage of payment, it will not prelude an action under sec 138. Hence, the drawer of cheque will be liable for offence u/s 138 for dishonour of cheque.

Leading Cases: Modi Cements Ltd. Vs Kuchil Kumar Nandi.

Q92 Emerald Pharma Ltd., an Indian company, drew a bill of exchange in Chennai on Mr. Arjun, who ordinarily resides in India but is temporarily residing in Dubai for six months on a work contract. The bill was accepted by Arjun through his authorised agent in Chennai and was made payable at the drawer's branch office in London to Zenith Chemicals Ltd., a Germany-based exporter. Before maturity, the bill was endorsed by Emerald Pharma in favour of an Indian bank in Mumbai for discounting. Decide, with reasons, whether the bill of exchange is an inland instrument or a foreign instrument under the Negotiable Instruments Act, 1881. (4 Marks)

Answer

Legal Provisions:

As per Section 11 of the Negotiable Instruments Act, 1881:

A promissory note, bill of exchange or cheque drawn or made in India, and made payable in India, or

A promissory note, bill of exchange or cheque drawn upon any person resident in India,

shall be deemed to be an inland instrument.

If these conditions are not satisfied, the instrument will be treated as a foreign instrument.

Analysis of Case:

The bill was drawn in India (Chennai).

The bill was drawn upon Arjun, who is ordinarily a resident of India, even though he is temporarily staying in Dubai. Residential status is determined by ordinary residence, not temporary absence.

The bill was accepted in India (through an authorised agent in Chennai).

The bill is payable in London. However, payment outside India does not affect its classification if it is drawn in India and upon a resident in India.

The further endorsement in favour of an Indian bank in Mumbai does not change the nature of the instrument.

Conclusion:

Since the bill was drawn in India and drawn upon a person resident in India, it satisfies the conditions of Section 11. Therefore, the bill of exchange is an inland instrument, even though it is payable in London.

Q.93 Bholenath drew a cheque in favour of Surendar. After having issued the cheque, Bholenath requested Surendar not to present the cheque for payment and gave a stop payment request to the bank in respect of the cheque issued to Surendar. Decide, under the provisions of The Negotiable Instruments Act, 1881 whether the said acts of Bholenath constitute an offence? (4 marks)

Answer:

Legal Provisions

(a) **Dishonour of cheque:** The facts of the case are some what similar to **Modi Cements Ltd vs. Kuchil Kumar Nandi**. In this case, the Supreme Court held that once a cheque is issued by the drawer, a presumption, under Section 139 of the Act, follows and merely because the drawer issues a notice thereafter to the drawer or to the bank for stoppage of payment, it will not preclude on action under Section 138. This Section is a penal provision in the sense that once a cheque is drawn on an account kept by the drawer with his banker for payment of any amount of money to some other person from out of that account for the discharge of in whole or in part of any debt or other liability.

Analysis and Conclusion

The cheque is returned by the bank unpaid due to insufficiency of amount to honour cheques or the amount exceeding the arrangement made with the bank. These types of persons are deemed to have committed an offence.In view of this Supreme Court decision, the finance company may be said to have committed an offence under Sec. 138 of the Negotiable Instruments Act, 1881.

Q94 A promissory note, payable at a certain period after sight, must be presented to the maker thereof for payment. Under which scenarios presentment for payment is

not necessary and the instrument is dishonoured at the due date for presentment according to the provisions of the Negotiable Instrument Act. 1881?
(7 Marks)

Answer:

As per Section 76 of the Negotiable Instruments Act, 1881: No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment, in any of the following cases:

(a) (i) If the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or

(ii) if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or

(iii) if the instrument being payable at some other specified place, neither he nor any person authorised to pay it attends at such place during the usual business hours, or

(iv) if the instrument not being payable at any specified place, he cannot after due search be found;

(b) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment;

(c) as against any party if, after maturity, with knowledge that the instrument has not been presented—

-he makes a part payment on account of the amount due on the instrument,

- or promises to pay the amount due thereon in whole or in part,

- or otherwise waives his right to take advantage of any default in presentment for payment;

(d) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

Q.95 State with reasons whether each of the following instruments is an Inland Instrument or a Foreign Instrument as per The Negotiable Instruments Act, 1881:

, (i) Ram draws a Bill of Exchange in Delhi upon Shyam a resident of Jaipur and accepted to be payable in Thailand after 90 days of acceptance.

(ii) Ramesh draws a Bill of Exchange in Mumbai upon Suresh a resident of Australia and accepted to be payable in Chennai after 30 days of sight.

(iii) Ajay draws a Bill of Exchange in California upon Vijay a resident of Jodhpur and accepted to be payable in Kanpur after 6 months of acceptance.

(iv) Mukesh draws a Bill of Exchange in Lucknow upon Dinesh a resident of China and accepted to be payable in China after 45 days of acceptance.

(4 marks)

Answer:

Legal Provisions

As per Sections. 11 and 12, In land Instrument means, any instrument drawn in or made in India and either payable in, or drawn upon any person Resident in India shall be deemed to be an Inland Instrument.

Any Instrument [Foreign] not so drawn, made or made payable shall be deemed to be foreign Instrument.

Analysis and Conclusion

Following are the answers as to the nature of the Instruments:

(i) In first case, Bill is drawn in Delhi by Ram on a person (Shyam), a resident of Jaipur (though accepted to be payable in Thailand after 90 days) is an Inland instrument.

(ii) In second case, Ramesh draws a bill in Mumbai on Suresh resident of Australia and accepted to be payable in Chennai after 30 days of sight, is an Inland instrument.

(iii) In third case, Ajay draws a bill in California (which is situated outside India) and accepted to be payable in India (Kanpur), drawn upon Vijay, a person resident in India (Jodhpur), therefore the Instrument is a Foreign instrument.

(iv) In fourth case, the said instrument is a Foreign instrument as the bill is drawn in India by Mukesh upon Dinesh, the person resident outside India (China) and also payable outside India (China) after 45 days of acceptance.

Q.96 Are the following instruments signed by Mr. Honest is valid promissory Notes? Give the reasons.
(a) I promise to pay D's son 10000 for value received (D has two sons)
(b) I promise to pay 5000/- on demand at my convenience
(ii) Who is the competent authority to issue a promissory note 'payable to bearer'?
Your answers shall be in accordance with the provisions of the Negotiable Instruments Act, 1881. (3 marks)

Answer:

(i) As Per Section 4, promissory note means, an instrument in writing (not being bank note or a currently note) containing an, unconditional undertaking signed by the maker, to pay a certain sum of money to a certain person or to the order of a certain person.

(a) This is not a valid promissory note as D has two sons and it is not specified in the promissory note that which son of D is the payee.

(b) This is not a valid promissory note as details of the payee are not mentioned in it and it is not an unconditional undertaking.

(ii) A promissory note cannot be made payable to the bearer **(Section 31 of Reserve Bank of India Act, 1934)**. Only the Reserve Bank or the Central Government can make or issue a promissory note 'payable to bearer'.

Q97 Mr. Y issued a cheque for ` 10,000 to Mr. Z which was dishonoured by the Bank because Y did not have enough funds in his account and has no authority to overdraw. Examine as per the provisions of the Negotiable Instruments Act, 1881 whether-
(i) Mr. Y is liable for dishonour of cheque, if yes, what are the consequences for such an offence?
(ii) What would be your answer if Y issued a cheque as a donation to Mr. Z?
(7 Marks)

Answer:

Legal Provisions

Dishonour of Cheque for Insufficiency, Etc., of funds in the accounts [Section 138 of the Negotiable Instruments Act, 1881]

Where any cheque drawn by a person on an account maintained by him with a banker—
• for payment of any amount of money
• to another person from that account
• for the discharge, in whole or in part, of any debt or other liability, [A cheque given as gift or donation, or as a security or in discharge of a mere moral obligation, or for an illegal consideration, would be outside the purview of this section]
• is returned by the bank unpaid,
• either because of the—
o amount of money standing to the credit of that account is insufficient to honour the cheque, or

o that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both.

Analysis and Conclusion

In the instant case,
Since Y's cheque was dishonoured by the Bank due to insufficiency of funds in his account, he shall be deemed to have committed an offence and shall, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to Rs. 20,000, or with both.
A cheque given as gift or donation, or as a security or in discharge of a mere moral obligation, or for an illegal consideration, would be outside the purview of this section. Hence, if Y issued a cheque as a donation to Mr. Z, he shall not be liable under section 138 of the Act.

Q98) Mr. A, residing in Delhi, drew a bill of exchange payable in London to Mr. B for ₹10,00,000. Mr. B endorsed it to Mr. C in Mumbai for value received. On maturity, the bill was dishonoured by the drawee in London. Mr. C, after noting and protesting the bill in London, incurred expenses of ₹20,000. He then approached Mr. B (endorser), who paid the full amount of ₹10,20,000 to Mr. C. Subsequently, Mr. B sought to recover the amount from Mr. A, the drawer. By that time, the current rate of exchange between London (place of payment) and Delhi (A's residence) entitled Mr. B to an additional ₹50,000.
Discuss the rights of compensation available to Mr. C and Mr. B under Section 117 of the Negotiable Instruments Act, 1881. (6 Marks)
Answer
Legal Provisions
As per Section 117 of the Negotiable Instruments Act, 1881:

- Holder is entitled to the amount due plus expenses of presenting, noting, and protesting.
- If the person charged resides at a place different from that where the instrument is payable, holder is entitled to the current rate of exchange between the two places.
- An endorser who has paid the instrument is entitled to recover the amount so paid, with 18% interest p.a., plus expenses.

If such endorser and the person charged reside at different places, exchange rate adjustment also applies.

The entitled party may draw a sight bill for the recoverable amount, attaching the dishonoured instrument and protest.
Analysis of the Case

Rights of Mr. C (Holder in Due Course):
Mr. C is entitled to ₹10,00,000 (amount due) plus ₹20,000 (expenses of noting and protesting in London).
Since the bill was payable in London but the liable party (Mr. B) resided in India (Mumbai), Section 117(ii) allows C to recover the amount at the current rate of exchange between London and Mumbai, if exchange fluctuation exists.
Rights of Mr. B (Endorser who paid):
Mr. B, after paying ₹10,20,000 to C, is entitled to recover this amount from A.

Under Section 117(iii), B is further entitled to interest at 18% p.a. from the date of payment until recovery.
Since A (Delhi) and the place of payment (London) are different, B can also claim the exchange rate difference of ₹50,000 under Section 117(iv).
Thus, B's recoverable amount becomes ₹10,20,000 + ₹50,000 (exchange) + interest @ 18% p.a. + protest expenses, if any, in further proceedings.
Additional Option:
B may also draw a sight bill on A under Section 117(v), attaching the dishonoured bill and protest. If this new bill is dishonoured, fresh compensation liability arises.
Conclusion
Mr. C can claim ₹10,20,000 (principal + protest expenses) and exchange difference (if any) from Mr. B.
Mr. B, after paying, can recover from Mr. A the entire ₹10,20,000, plus ₹50,000 exchange difference, plus 18% p.a. interest, and incidental expenses.
Hence, Section 117 ensures that both holder and paying endorser are fully compensated for loss arising from dishonour, especially when international exchange rates are involved.

Q99) Anjali purchased various cosmetic products worth ` 15,000 during the last week from Sushil, a shopkeeper, on credit of one month. After a fortnight, she makes out a blank promissory note, signed it and delivered to Sushil who further endorsed it to Manish for the payment of his dues. Manish, who is holder in due course, filled up the due amount of ` 17,000 from Sushil and on maturity presented it to Anjali for payment but she refused to pay because the amount filled up is more than the agreed amount of ` 15,000. It is to be noted that the amount of ` 17,000 is covered by the stamp affixed on it. Referring to the provisions of the Negotiable Instruments Act, 1881 decide, whether Anjali is liable to honour the promissory note to Manish for ` 17,000? (4 Marks)

Answer

Section 20 of the Negotiable Instruments Act, 1881 reads as "Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp.
The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount. Provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder".
In the instant case, Anjali is not liable to honour the promissory note to Manish for ` 17000. She is liable only for ` 15000.

Q100)Priya, a small business owner, receives a bill of exchange from her customer, Sanjay, which is due for payment on October 15th. On October 12th, Priya presents the bill of exchange for payment at Sanjay's office during regular business hours, but Sanjay is not present. Priya leaves the bill with Sanjay's assistant, requesting to be presented to Sanjay for payment when he returns. However, Sanjay's assistant forgot to give the bill, and Sanjay does not make the payment by the due date, and the bill is dishonoured. Based on the provisions of the Negotiable Instruments Act, 1881,

examine whether Priya's presentation of the bill of exchange to Sanjay's assistant is valid under law. (3 Marks)

Answer

Presentment for payment [Section 64 of the Negotiable Instruments Act, 1881]
As per section 64 of the Negotiable Instruments Act, 1881, promissory notes, bill of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided.

In default of such presentment, the other parties thereto are not liable thereon to such holder. So, presentment for payment must be made to the person primarily liable on the instrument, or in their absence, at the proper place during the usual business hours.
In this case, Priya presented the bill at Sanjay's office during regular business hours, but since Sanjay was not present, she left the bill with his assistant.
While leaving the bill with the assistant might be considered a practical step, it does not fulfil the strict legal requirement of presenting the bill directly to the drawee (Sanjay) or his authorised representative for payment.

Therefore, the presentation of the bill by Priya to Sanjay's assistant is not valid under law.

All the Best☺